SENATE—*Wednesday, November 27, 1991*

(Legislative day of Saturday, November 23, 1991)

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

PRAYER

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

Let us pray:

** * * for there is no power but of God: the powers that be are ordained of God * * * For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same: For he is the minister of God to thee for good * * **—(Romans 13:1,3,4).

Almighty God, Lord of history, Ruler of the nations, as the Senators return to their home States, may they be reminded of their divine appointment, their accountability to God and their responsibility to lead the people as well as represent them. Give the Senators the wisdom and courage to tell the people what they need to hear, not simply what they want to hear. Give them the ability to communicate to their constituents their responsibility as a sovereign people to be involved in our political system, not just critics of it. To the extent that cynicism and criticism are based upon the Senators' failures, help them say that which will restore the confidence of the people. When the cynicism and criticism are based upon misinformation, help the Senators set matters straight.

Guide us in Your wisdom, O Lord. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 27, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

SCHEDULE

Mr. MITCHELL. Mr. President, and Members of the Senate, the House this morning completed action on the supplemental appropriations conference report. It is my intention that the Senate will take that up shortly and I hope enact it shortly.

The House also during the night completed action on the surface transportation bill, and it is my hope and intention that the Senate proceed to that bill this morning.

The House is now acting or has just acted on the crime bill. It will also be taking up RTC legislation, banking legislation, and we hope the Medicaid moratorium legislation. It is my hope that, as the House acts on these measures, they will be coming before the Senate for consideration and action during the day.

HONORING AMBASSADOR JOSEPH REED

Mr. WARNER. Mr. President, I rise today to add my commendation to the many being expressed on behalf of Ambassador Joseph Reed. A most distinguished public servant and diplomat, the Ambassador performed many critical assignments for our Nation. Ambassador Reed recently completed his tour as the Chief of Protocol of the White House.

On the 15th of October 1991, his Excellency Jacques Andreani, the French Ambassador to the United States, presented Ambassador Reed with the Le-

NOTICE

An interim December issue of the Congressional Record for the 102d Congress, first session, will be printed after the November 27, 1991, adjournment. Members may submit manuscript for printing to the Official Reporters of Debates not later than December 18, 1991. The interim issue will be dated December 18, 1991, and delivered on December 19.

None of the material printed in the Congressional Record during the recess may contain subject matter, or relate to any event, which occurred after the date the Congress officially adjourned.

No provision herein shall be construed to supersede the two-page rule.

All material must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates, Room HT-60 or S-220 of the Capitol. These offices are open Monday through Friday between the hours of 10 a.m. and 3 p.m.

Members of Congress desiring to purchase reprints of materials printed in the Congressional Record during the adjournment may do so through the Congressional Printing Management Division, located at the Government Printing Office. This office may be reached by telephoning 512-0224 between the hours of 8 a.m. and 4:30 p.m. daily.

By order of the Joint Committee on Printing.

CHARLIE ROSE, *Chairman.*

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

gion D'Honneur in the Rank of Officer from the French Republic.

I would like to take this opportunity to honor Ambassador Reed by inserting into the CONGRESSIONAL RECORD the remarks given by His Excellency Jacques Andreani and Ambassador Reed at the ceremony.

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

SPEECH BY JACQUES ANDREANI, FRENCH AMBASSADOR TO THE UNITED STATES

It has always been a wonderful pleasure to be invited by Joseph Reed, but it is a real thrill to play host to him in these circumstances.

I am also deeply honored by the exceptional quality of the distinguished persons who came here tonight, because of Joseph, because he felt it would be good to have them with him today, and they came because they were his friends. It is as simple as that.

I hasten to add that I did not ask Joseph to invite all his friends to our party. This Embassy would have not been large enough. What we have here today is what Joseph likes to call "his very special friends". And it is indeed quite something to be among Ambassador Reed's very special friends.

These special friends, whom we are so glad to welcome here this evening, come from all walks of life: diplomacy, of course, business, law, the Congress, the press, the administration. This variety recalls to the mind the multiform professional and human experience of Ambassador Reed. He was assistant to the Chairman of the International Bank for Reconstruction and Development. Then he went over from the international financial institutions to the world of Finance proper, becoming Vice-President and assistant to the Chairman of the Chase-Manhattan Bank, David Rockefeller.

At this point it happened, the last event which was no doubt written in the great Book of Destiny: the encounter of Joseph Reed with Diplomacy, for who would not say that this very talented man, who was no doubt gifted for many various activities, was particularly gifted for the profession of Diplomat, which is not so much a Profession, as an Art? And who can say how much Diplomacy, and I am thinking of course not only of United States Diplomacy, but of Diplomacy at large, would have lost, if Joseph had not entered its ranks?

It is as Ambassador to Morocco that Mr. Reed became a diplomat, and he has retained from that assignment a love for this country which is still vivid today and which was very apparent when quite recently he organized the official visit of His Majesty King Hassan II in the United States. After his Moroccan years, Joseph Reed was selected to be permanent representative of the United States to the Economic and Social Council of the United Nations, a return to the sphere of the International Organizations which was going to be confirmed with his appointment as Under Secretary General of the U.N. for Political and General Assembly Affairs.

Finally, at the beginning of 1989, President George Bush appointed Ambassador Reed as Chief of Protocol, a high and difficult responsibility which he has exerted both efficiently and brilliantly.

In expressing my admiration and my gratitude for the performance of Joseph Reed as Head of Protocol, I speak for myself, most sincerely, but I speak also in the name of the numerous diplomats residing in the United States, and who have so widely benefited from his intelligent attention and his careful help.

I have just said that Diplomacy was an Art. It is true for all the specialized branches of our varied and exciting trade, but it is certainly particularly true concerning the Protocol.

The good Chief of Protocol must have very special gifts among which a perfect education and an exquisite politeness, but also a strong sense of organization, a firmness of steel, and a great reserve of cold blood, in case something threatens to go wrong, as it may always happen. But the truly trained Diplomats are aware of the fact that the Head of Protocol, who is, as the Captain of the ship, completely alone at the hour of the greatest peril, that is when the official visit, or the ceremony, has started, has no chance to come out with honor in the presence of his eternal enemy, that is the unexpected, if he is not endowed, not only with education, and politeness, and organization, and firmness and cold blood, but also with those qualities that the colleagues who do the political work boast for themselves, but would not always recognize in a Chief of Protocol, that is a complete understanding of political situations. Because finally, if you try to go just a little bit beneath the surface, what lies under such apparently futile things as the list of guests, and the sitting arrangements, and the gifts and the rest, is the political interests and the political disagreements.

But with Joseph things never go wrong. And the great Artist passed all the most difficult tests of diplomatic skills with flying colors. He also took the time and the trouble to give his attention, not only to the High and Mighty, our masters, but also to the most humble of their servants, that is to the most modest of diplomats—if ever these two words can go together. He had a way of catering to the needs of the diplomatic Corps which was quite exceptional. He really gave a collective life to the Diplomatic Community in a country in which the tendency had been traditionally that every one was a little bit for himself. What the Chief of Protocol achieved in this field was of great benefit, in particular, for the smaller Embassies, which had suffered most from the lack of general encounters. I understand that Ambassador Reed, noting that there were 220,000 foreign diplomats on the soil of the United States, compared his responsibilities to those of the Mayor of a fairly sized town. Would it be an exageration to suggest that he was in some way a father to these 220,000 children?

I seem to have been always receiving one thing or other from Joseph. One day, a nice invitation to Blair House or to a special preview of an exhibition or a show. The next day, a very nice letter, drafted in such a way that, while it seemed pretty obvious that the same letter exactly has been sent to 148 other Heads of Mission, there was still something there that made you believe that the author of the letter has been thinking particularly about you, and, mind you, after all, it was probably true. Another time, a photograph taken at the White House or elsewhere, and, there again although it could be fairly routine, you had always a sense that it was a friend caring about you in a particular way. Then, when it was neither invitation, nor friendly note, nor photo, it was a wonderful small jar of delicious Joseph's jelly.

Finally, all that being said, you reach the conclusion that Ambassador Reed must have a secret. What is Ambassador Reed's secret? It has something to do with class, but it is more than class. I believe it has something to do with the warmth of a personality: you feel well in life, and there is an excess of this joy, of this warmth, that overflow and that you want to share with your fellow human beings.

The Legion of Honor, which I shall bestow in a minute upon Ambassador Reed, was created by Napoleon Bonaparte to signal the merits of the warriors on the battlefield, but more generally high merit in all spheres. I am then tempted to list for you all the glorious places in which he illustrated himself. Fortunately, these are not battlefields, but quite in contrast, places of peaceful encounters: Kennebunkport, Paris, Saint Martin, Key Largo, Houston, la Guadeloupe, London, and I am certainly omitting one or two. It is the list of the meetings between our two Presidents, and, in all these places, Joseph Reed was the discreet and efficient stage-manager. A stage-manager who obtained the unequivocal admiration of the leading actors, and in particular of President Mitterrand. Because of this, and in recognition of his great qualities and outstanding accomplishments, President François Mitterrand decided to make him an Officier de la Légion d'Honneur.

SPEECH BY AMBASSADOR JOSEPH VERNER REED

Ambassador Andreani, Dean of the Diplomatic Corps, Excellencies, Colleagues, family and friends, this is a great honor!

To have the curtain come down on my tour as the Chief of Protocol of the White House with this bestowal by the French Republic of the Legion D'Honneur is thrilling and at the same time humbling.

I thank you Ambassador Andreani and I extend special thanks to President François Mitterrand for this extraordinary gesture—an elegant gesture which has touched my heart and soul.

Friends and colleagues,

For me, this evening, with its raison D'Etre being the awarding to me of the French Republic's Decoration, is in a real sense "a Bientot" but, friends, I hope it will not be "Au Revoir". I treasure you who have come from near and far. Thank you for your support and thank you for your encouragement. Thank you for your friendship. You will get the "big hello" in the Big Apple, the city of my birth, where, thanks to my friend President Bush I will be returning to the Parliament of man. I trust our paths will continue to cross . . . I hope so and I count on it.

My relationship to France, La Belle France, is lifelong—J'Adore La France! Yes! I am a Francophile. My father was born in Nice on the Riveria at the turn of the century, my grandfather had a chateau on the River Cher in the "Garden of France"—"The Valley of Kings". My wife Mimi's mother hailed from the Ile-De-France and my parents maintained a residence on a little square by the Bois De Boulogne. Paris—the city of light . . . A city that was and is a feast—culture, cuisine, sights and sounds; all the immortal attractions, Paris, like all of France epitomizes elegance, modernity, freedom, sophistication and humor.

During President Bush's Presidency a special relationship with President Mitterrand developed . . . A welcome turn in that France has a truly global presence. The tricolor flies from the Atlantic to the Pacific and the Indian Oceans; her presence is very real throughout Africa and in our hemisphere, France is in the Caribbean and the French language is in the air in our neighbor to the North. La Gloire De La France . . . I respect this concept as a marvel. It's not a boast, it's a statement of fact.

President Bush and President Mitterrand have met 9 times for official exchanges. I have been privileged with my colleague and friend Ambassador Andre Gadaud, Chief of Protocol of France, to help work on the logistics and the "setting of the scene" for these meetings of diplomacy. There have been more bilaterals between President Bush and President Mitterrand than President Bush has had with any other Chief of State. From the first trip overseas of President Bush to Tokyo for the funeral of the late Emperor Hirohito—to meetings in Kennebunkport, Saint Martin, Paris, Key Largo, London, Rambouillet, Houston . . . A patchwork of places.

With these meetings, the special relationship developed not only between the Presidents but extended as well to the official delegations and accompanying parties . . . a working atmosphere of "extended family" collegiality!

Our delegations have met bilaterally and in the multilateral forum during three economic summits. There was the celebration of the bicentennial of the French Revolution in 1989 with America's own Jessie Norman blazing forth the "La Marseillaise" on the Place De La Concorde. Then there was President Mitterrand's banquet at Versailles in the Hall of Mirrors, when 578 mirrors appeared to catch fire in the candlelight that celebrated the signing of the Treaty of Paris—all were highlights! They were orchestrated and executed with precision and panache by President Mitterrand, my counterpart Ambassador Andre Gadaud, and the dedicated teams of the Elysee Palace and the Quai D'Orsay.

The United States of America owes its independence to France. General Lafayette and his compatriots contributed enormously, indeed essentially, towards our Nation's struggle for freedom. America and France are allies and close friends; blood is comingled to seal our relations . . . in this century there was Verdun during the Great War to "D-Day" on the beaches at Normandy in World War II to our co-operation in the gulf with Desert Storm. On occasion, we may, like brothers quarrel, but every time there is a matter of value France and the United States of America are on the same side of the barricades.

As a Francophile, may I transport you on a flight to pleasure and treasure . . . to France . . . a country of visual riches of two millenia of art and architecture, the scent of the world's great perfumes, the majestic music of grand opera: four seacoasts, the alps; a land and a people of endless variety. France is a land of abundance in every sense: a feast for the senses.

My love and respect for La Belle France knows no bounds—not only do I treasure my destinations in the fabled land, but I love the Joie De Vivre of Les Francais as a way of life.

So . . . my friends, as you can tell from this ode of admiration to La Belle France, I am doubly moved to receive this noble order of the Legion D'Honneur created by the Emperor of France Napoleon I in 1802.

Again, my special thanks to you, Ambassador Andreani, for acting on behalf of President François Mitterrand. This reception in this dignified Ambassade De France in Kalorama created by you and Madame Andreani is splendid and once again a demonstration of the symbol of France's sense of elegance.

It is an honor, yes a privilege, to rally the call for the spirit of friendship and the ongoing fruitful relationship between the French Republic and the United States of America. Vive L'Amitie entre La France et les Etats Unis! Vive L'Amerique! Vive La France!

AMERICA'S WELFARE QUEEN FLEET

Mr. GRASSLEY. Mr. President, I would like to share with my colleagues an article entitled, "America's Welfare Queen Fleet, the Need for Maritime Policy Reform." This article was written by Rob Quartel, a Commissioner at the Federal Maritime Commission and was included in the recent publication of Regulation, "The CATO Review of Business and Government."

The title speaks volumes. Our Nation's maritime policies and programs, notwithstanding their good intentions, have transformed our once mighty, proud U.S.-flag commerical merchant marine into a pitiful, helpless ward of the State * * * not just dependent upon welfare from American taxpayers and consumers * * * but actually addicted to its drugs—the next taxpayer fix, or protectionist shipment of goods.

Our U.S.-flag merchant marine can no longer fend for itself in the real world. It cannot compete. Even if all the unfair foreign subsidies and policies were eliminated, the U.S.-flag merchant marine could not compete. This is why America's maritime unions and shipowners, and their allies in Congress, worked so hard to lobby the Bush administration to keep any discussion of maritime policies off the GATT table.

Unfortunately, our administration agreed to this nonsense. And now that the Nordic countries want to put shipping restrictions on the GATT table, an administration which advocates free trade embarrasses itself by leading the opposition to the Nordic proposal.

Why can't the U.S.-flag fleet compete? There are many reasons, which Commissioner Quartel points out. But a very large part of the reason is that U.S. union crews cost way too much.

The former commander of the Military Sealift Command, Vice Admiral Corroll, hit the nail on the head nearly 10 years ago when he testified, and I quote, "Why are we in such a mess?*** One of the reasons is that U.S. crew costs continue to be the highest in the world. Monthly crew costs of U.S.-flag ships are as much as three times higher than those of countries with comparable standards of living, such as Norway."

Commissioner Quartel delineates other programs and policies which have contributed to the decline of America's merchant marine. This includes policies such as the Jones Act and cargo preference which in essence serve as entitlement programs allowing U.S.-flags to charge Uncle Sam and American business and consumers basically what they wish. Shipyard policies, antitrust exemptions, direct subsidies, manpower requirements, and conflicting national defense requirements all contribute to the demise of our merchant marine. Commissioner Quartel also outlines reforms that must be implemented if we hope to revive the U.S.-flag fleet.

Mr. President, I hope my colleagues will take a moment to read Commissioner Quartel's article in its entirety which I am asking unanimous consent to be included in the RECORD.

But I would like also share a few quotes from the Commissioner as follows:

> Only the S&L debacle respresents a bigger government—industry—special interest scam than that which today passes for a national merchant marine policy.
>
> By the end of the Gulf War, America's subsidized merchant fleet had directly contributed only six aging ships to the armadao of more than 460 that transported military materials into Saudi ports. Some eight U.S. merchant marine ships carried hundreds of thousands of tons of military goods to the vicinity of the war zone—Singapore, the United Arab Emirates, and Haifa. But many relied on foreign-flag feeders with their foreign crews to complete the runs to Saudi Arabia and thus exposed the bankruptcy of the man-American argument that underpins much of U.S. maritime policy.
>
> In short, the success of the military sealift—a brilliant feat of logistics—occurred DESPITE (rather than because of) 75 years of government subsidies, protectionism, regulation, and entry and management controls promoted as necessary for maintaining this so-called fourth arm of the nation's defense.

Commissioner Quartel continues by stating that—

> U.S. maritime policies should be based on more than emotion and the narrow parochial interest of drying labor unions, debilitated companies, and congressional PAC contributions. The needs of ocean transportation users (not just the needs of the carriers), real national security requirements (not empty rhetoric), and a realistic appraisal of the tough federal budget limits that will exist into the foreseeable future should drive decisionmaking.

Mr. President, those are tough words, but we have a tough problem. Sticking our head in the sand, allowing business as usual, seeking more drugs for the addiction, such as the recent efforts to siphon off the lifeblood of other programs such as food assistance to the Soviet Union or expanding cargo preference into the commercial trade arena through the foreign aid authorization bill, will do nothing to save our merchant marine.

I would also like to share with my colleagues an article printed in today's Wall Street Journal written by James Bovard. He, too, pulls no punches, and I would like to read some of his quotes as well.

Mr. Bovard states that:

> Since Congress has given U.S.-flag ships a captive market, congressmen feel entitled to force American shippers to hire American workers, and strong unions guarantee exorbitant salaries. U.S. ship crews cost six times more than Third World crews; American shipmasters routinely cost shipping companies $300,000 a year. The high pay

breeds corruption: An FBI sting operation recently discovered that shipping jobs are illegally being sold by one maritime union.

Mr. Bovard continues:

The Jones Act engenders a chain reaction of extortion—allowing American shipyards to charge stratospheric prices to American shipbuyers, allowing American-flag ships to charge shakedown shipping rates to American businesses, and allowing American congressmen to demand lavish campaign contributions from the American maritime industry (more than $1 million a year).

Mr. President, our Nation's maritime policies and programs have been justified on the basis of two objectives—to enhance America's foreign commerce and to maintain fleets of vessels and crews necessary for military sealift needs.

These policies and programs have failed miserably in meeting either of these objectives and therefore should be abolished and replaced. Everyone knows this is true. The facts don't lie. Simply look at the fruits of our maritime policies during the last 40 years.

At the end of World War II, America had the largest fleet—over 2,000 vessels. By 1950, our U.S.-flag fleet consisted of 1,050 vessels. Today, there are only about 360 vessels, and fewer than 100 remain in the oceangoing fleet.

In 1950, we had 56,629 seafaring jobs sailing under U.S.-flags. Today, we have fewer than 10,000.

In 1950, U.S.-flag vessels carried 43 percent of America's foreign trade. Today, U.S.-flags carry less than 4 percent of our foreign commerce.

Has America's foreign commerce depended upon the policies and programs supporting our U.S.-flag merchant marine? Obviously not. And in fact, our foreign commerce has thrived in spite of our wasteful merchant marine policies. From 1950 to 1985, our foreign trade skyrocketed from 117 million metric tons to 641 million metric tons.

So it is clear our merchant marine policies can no longer be defended and justified based upon our foreign trade interests. And, in fact, maritime policies such as the Jones Act which artificially increases the cost of waterborne transportation, actually makes our foreign trade less competitive.

So this leaves our U.S.-flag merchant marine programs and policies dangling precariously on the national defense justification * * * a justification which was exposed as a complete failure * * * a complete myth * * * by our recent Persian Gulf war.

That is one reason I think we now see 2 weeks ago, Warren Leback, the U.S. Maritime Administrator arguing that we must now shift back to the economic argument. It was reported in the Journal of Commerce on November 14, 1991, that Mr. Leback said that "Maritime support advocates must take their military argument and 'turn it toward the economic defense of our country.'" Mr. Leback goes on to complain about free traders who would repeal the Jones act and other maritime subsidies pointing out that there is no level playing field when it comes to global shipping because other nations support their maritime industries.

But what Mr. Leback did not mention, is the fact that it is the United States, at the strong, vocal insistence of U.S. maritime unions and companies, refuses to attack these so-called unfair foreign subsidies and policies at the GATT table.

You cannot have it both ways, although granted, the U.S. Maritime industry has enjoyed having it both ways in the past. I think the party is about over, however.

Mr. President, what are we getting for our money? One of the most overused defense arguments is that we must maintain a commercial seafaring force able to man our vessels during time of war. I say that's nonsense. I say we either devote a certain number of Navy personnel, or create a reserve, to handle cargo sealift needs. It could be done at a fraction of the cost.

What does it cost us to maintain those 10,000 seafaring jobs now working under the U.S.-flag?

Last year, I shared with my colleagues data from the Maritime Administration which breaks down these jobs into three categories based upon the maritime program which supports them. MARAD officials said that 2,024 seafaring jobs were supported by cargo preference; 2,333 seafaring jobs were supported by operating differential subsidies, and the remaining 5,000 seafaring jobs were supported by the Jones Act.

The Congressional Budget Office had also determined for Senator DOMENICI and I that cargo preference cost American taxpayers $825 million in fiscal year 1991, and operating differential subsidies cost $225 million.

Cargo preference, therefore, forces American taxpayers to spend over $400,000 per job for our high-priced commercial seafarers.

Operating differential subsidies force American taxpayers to spend about $120,000 per job, according to Commissioner Quartel.

So what do those 5,000 jobs supported by the Jones Act cost Americans. I did not know last year, but recently the U.S. International Trade Commission released a study which showed that the Jones Act is costing American consumers and businesses over $10 billion per year. Commissioner Quartel estimates that this figure could be as high as $20 billion.

Using the ITC's figures, that translates into $2 million per year. Using Commissioner Quartel's estimates, it costs $4 million per job.

But for U.S.-flag maritime supporters, price is no object. Americans, however, concerned about deficit spending are concerned.

And Americans concerned about revitalizing the economy certainly care about a $10 billion drag on the economy that destroys 2,000 jobs in agriculture, forestry, mining, and other industries.

It is something to think about during the recess. It will be something to act upon when we return for the second session of the 102d Congress.

Mr. President, one last note about the military need to spend up to $4 million per year to maintain one seafaring job for that day in the future when we need to man cargo vessels for a military sealift operation.

Here is some food for thought. Military Sealift Command officials told my office that at the outbreak of the Persian Gulf war effort, the union contracts for our seafarers contained no provision for war zone bonuses. So these high-priced union seafarers which have been living high off the hog thanks to Uncle Sam all these years, rushed to add war zone bonuses requiring that they get double pay while in the war zone.

Therefore, as an example, if captain of a commercial U.S.-flag vessel makes $14,000 per month, and served a month in the war zone, he would have received a war zone bonus of $14,000.

If a U.S.-flag commercial captain got $14,000 in a war bonus, what did a Navy captain get? $150.

I have said it earlier this year, I don't question the patriotism of our U.S.-flag merchant marine.

I just don't know, however, if we can afford this kind of patriotism.

GATT AGREEMENT

Mr. GRASSLEY. Mr. President, over the last couple of weeks, the press has begun to report significant movement toward a GATT agreement in all areas after President Bush's personal intervention. No one can doubt the stimulating effect a fair agreement will have on the world economy and I hope our dreams will not be dashed again by intransigence on behalf of the European Community. Word coming out of Geneva to me as early as this past Monday, from a person whose judgment I value, indicates that there is still considerable turmoil and uncertainty to the outcome and ultimate success of these discussions.

At the beginning of last week, most participants were feeling optimistic that a breakthrough in agriculture had been achieved, but by Wednesday pessimism was creeping back in. I also noted with interest a statement made by the French Agriculture Minister, Louis Mermaz in the November 19 edition of the French paper, Tribune De L'Expansion:

Referring to his recent talks with his American counterpart, Ed Madigan, the French Minister said, "While our paths are open, I don't see any agreement on anything."

Referring to a continuing disagreement with Washington on rebalancing,

which the French want in the cereals sector. The French Minister stated, "Everything remains to be negotiated" and "no agreement is better than capitulation."

Mr. President, I can tell you that the statements made by the French Agriculture Minister concern me greatly. I can also tell you that commodity and agribusiness groups are concerned that the administration will become so enamored with an agreement in services and intellectual properties that it may be inclined to forsake agriculture. And based on what I have seen and heard discussed in our media, I remain skeptical of how far the EC has moved in relation to the U.S. position. To a degree, my discomfort revolves around the emphasis of the stories in the Popular Press; "Breakthrough in AG tied to movement in services and intellectual property." That is agriculture, rather than being the linchpin to a successful round, is becoming a secondary factor, a throwaway concession to enable larger agreement to be reached.

I have been telling farmers that it is difficult to conceive of an agreement being reached in other areas that would be so beneficial to this country's other sectors that it would outweigh a bad agreement in agriculture. I still stand by that assessment, although it may become necessary to remind the administration of our commitment to success in the AG sector and our willingness to vote against any agreement which does not allow for U.S. farmers to exploit their international competitive advantage.

It is my understanding that Director General Dunkel has asked for a revised draft of all sectors by December 20. One can only conclude that the pace of negotiations has slowed for all sectors. That being the case, will the negotiations spill over into next year or die a natural death next month? Whatever the outcome Mr. President, let me state that I concur with the French Agriculture Minister's statement of the 19th in which he says "No agreement is better than capitulation." I would also note with approval, and hope that the French Agricultural Minister Mermaz is aware of a letter sent to President Bush by Senators BENTSEN and PACKWOOD in which they have clearly articulated the position of many of us in this body, that, "No agreement is better than a bad agreement" for the United States of America.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today is the 2,447th day that Terry Anderson has been held captive in Lebanon.

TECHNICAL CORRECTIONS TO THE 1990 FARM BILL

Mr. DURENBERGER. Mr. President, for over 85 years, the Federal Meat Inspection Act [FMIA] has stood as a shield to protect the public health. The U.S. Department of Agriculture [USDA] requires that an inspector go into every plant processing meat products, such as pizza, everyday to guarantee only the highest standards of safety and sanitation are met.

In the technical corrections bill there is an amendment to the FMIA, which would mandate the Secretary of Agriculture to exempt certain pizzas from the public health inspections performed by the U.S. Department of Agriculture, if certain terms and conditions are met. There was a similar provision in the legislation which was earlier approved by both the House and the Senate. That legislation would have granted the Secretary the authority to exempt products, such as pizza, but only if the Secretary, following rulemaking, found such an exemption would be consistent with public health.

No rulemaking or hearing has been held since the earlier legislation was approved by the House and Senate. Nor has a scientific panel reviewed the public health implications of granting an exemption to pizza. Nevertheless, a decision has been handed down. The current provision now grants an exemption from inspection for pizza as a matter of law. To put this exemption into effect, the Secretary is required to establish terms and conditions as may be necessary to be certain of food safety. I am concerned about this provision.

However, because the exemption of pizza only takes effect upon the issuance of regulations that take into account public health safety, including the sanitary requirements imposed on custom operations, the public health may be protected. It is clear that if regulations specifying terms and conditions that guarantee protection of public health cannot be promulgated, the exemption will not go into effect.

I support final approval of the technical corrections bill. However, I will closely monitor the Departmental rulemaking on this important issue to public health.

FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991

Mr. LEAHY. Mr. President, late last night, the Senate approved the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, H.R. 3029. As there was no report to accompany the legislation, I would like to set forth the intent underlying one section of the bill to you at this time.

Section 118(d) of the legislation amends section 326 of the Food and Agriculture Act of 1962. The provisions of this section are intended to cover circumstances where producers have relied in good faith on incorrect determinations rendered by local government officials. It is limited in scope. This section is not intended to allow the Secretary to hold harmless producers or local government officials in instances where determinations were made and relied upon although those determinations were obviously inconsistent with existing rules and regulations. Otherwise, the Secretary could exempt an entire pattern of illegal conduct carried out at the local level on the basis that the individual farmer relied on the bad advice of a local government official, which advice was obviously incorrect to both the official and the farmer.

VETERANS' COMMITTEE ACCOMPLISHMENTS

Mr. SPECTER. Mr. President, as a member of the Veterans Affairs Committee since I began serving in this body, and as a veteran myself, I understand the need for our Nation never to forget the debt it owes those who have worn the uniform.

I want to address for a few moments the activities of our committee during my first year as ranking Republican member.

As I prepared these remarks, I took the time to analyze veterans' legislation in terms of measures which actually became law—not simply introduced or reported out of the committee—since I began my service both in the Senate and on the committee in 1981 in the 97th Congress. I discovered, Mr. President, a rather startling fact: In this single session, we have had more veterans' bills signed into law than in any 2-year Congress since I have had the privilege to serve as a Senator. Indeed, in this first session of the 102d Congress, we have had nearly as many substantive bills become law as in the 100th and 101st Congresses combined. I have prepared a chart demonstrating this fact, and ask unanimous consent that it be inserted in the RECORD at this point in my remarks:

Congress	(I) Bills in committee jurisdiction signed into law	(II) Resolutions and bills limited to naming VA medical facilities	(I less II) Substantive bills signed into law
102d[1]	13	1	12
101st	7	3	4
100th	9	0	9
99th	6	0	6
98th	8	2	6
97th	7	0	

[1] First session only, through November 24, 1991.

That is a record in which we can take considerable pride. And I believe the proudest must be those of us fortunate enough to serve on the Committee on Veterans' Affairs.

I would like to spend some time discussing these new laws with my colleagues.

1991 COLA

Mr. President, my first priority this year as ranking Republican member was to ensure passage of the cost-of-

living allowance for service-connected disability compensation and for dependency and indemnity compensation. There can be no more important class of citizens than those who have suffered disabilities or lost a spouse due to service. I felt a real sense of satisfaction when the Senate passed, and the President signed Public Law 102-3, the Veterans' Compensation Amendments of 1991, the bill which gave these most deserving beneficiaries a 5.4-percent increase.

AGENT ORANGE

Another priority for me was attempting to settle the questions surrounding the exposure of American troops in Vietnam to the herbicide known as agent orange. We worked long and hard to fashion a compromise which would take into account the widely varying views on this sometimes divisive issue. We did in fact pass that compromise, and I was pleased to represent my colleagues and my constituents at the White House on February 6 as President Bush signed Public Law 102-4, the Agent Orange Act of 1991.

TWO SPECIAL READJUSTMENT LAWS FOR PERSIAN GULF WAR VETERANS

As my colleagues know, I voted in January to support the President in his approach to the crisis in the Persian Gulf. On January 17, as the first air strikes began in Iraq, we knew that special legislation would be required to ensure that the veterans of Operation Desert Storm would receive all the benefits owed them by a grateful nation. We worked very hard on the Veterans' Committee to do just that, resulting in two important laws. On March 18, 1991, the President signed Public Law 102-12, the Soldiers' and Sailors' Civil Relief Act Amendments of 1991, which clarified reemployment rights for veterans and improved their rights in reinstatement of health insurance. On March 22, 1991, he signed Public Law 102-16, which will provide gulf war veterans with important education, employment and training benefits to ease their return to civilian life.

VA PHYSICIAN AND DENTIST PAY

No veterans' issue has higher priority with me than that of health care. It is critical that VA provide the best possible care, particularly to those who have been disabled in service. That was the key reason I fully supported the Public Law 102-40, the Department of Veterans Affairs Physicians' and Dentists' Compensation and Labor Relations Act of 1991, which the President signed on May 7, 1991. This bill, by increasing pay for physicians and dentists in the VA health-care system, will help attract and retain the kind of quality professionals our veterans deserve.

VETERANS' HOUSING

On June 13, the President signed what became Public Law 102-54, a measure which improves VA's housing programs, both for those who can afford it and those who cannot. In addition to making several worthwhile changes in VA's Loan Guaranty Program, the law also provides three important benefits for veterans struggling to regain their status as fully functioning members of society. First, in one of its most important provisions, the bill authorizes the Secretary to carry out a 3-year demonstration project of therapeutic transitional housing for veterans working under VA's compensated work therapy [CWT] and/or incentive work programs, involving up to 50 residences. Second, the Public Law 102-54 authorizes loans of up to $4,500 to nonprofit organizations to establish transitional therapeutic housing for veterans recovering from substance abuse disabilities. Finally, this new law extends, for 3 years, VA's authority to sell acquired properties for use as shelters primarily for homeless veterans and their families. These are all important provisions, Mr. President, which will help some of our neediest veterans to reenter the mainstream of society.

COURT OF VETERANS APPEALS

On August 6, the President signed H.R. 153—now Public Law 102-82—the Veterans' Judicial Review Amendments of 1991, which makes several important administrative and technical improvements in the operation of the U.S. Court of Veterans Appeals. As you know, Mr. President, the Court of Veterans Appeals is a Federal court created by Congress in 1988 with exclusive jurisdiction to review appeals of claims for veterans' benefits which have been denied by the Board of Veterans Appeals, an administrative tribunal within the Department of Veterans Affairs. As one who consistently championed external review of VA's benefits decisions, I think it is vitally important that we on the Veterans' Committee pay close attention to this important court. I was pleased we were able to act so quickly this Congress.

TECHNICAL REORGANIZATION OF VETERANS' LAWS

On August 6, the President also signed into law H.R. 2525—now Public Law 102-83—the Department of Veterans Affairs Codification Act, which provides technical changes in a variety of statutes, primarily title 38 of the United States Code, required by VA's elevation to Cabinet status. This technical effort was a major undertaking by the committee, Mr. President, in progress for more than a year. Its effect, I believe, will be to ease the interpretation of veterans' laws, and permit both the Congress and VA to serve veterans better.

COMPENSATION PROGRAMS IMPROVEMENT

President Bush signed Public Law 102-86, the "Veterans' Compensation Programs Improvement Act of 1991," on August 14. This important bill contains 21 provisions affecting the compensation and pension programs; life insurance programs; VA health care; and real property and facilities. These are provisions which will increase both fairness to individual veterans and the ability of VA to do its job. For example, the law prohibits VA from changing a veterans' disability rating based on an administrative change in its rating schedule unless an improvement in the veteran's disability is shown to have occurred. The new law also extends VA's contract authority for alcohol or drug-abuse treatment at community-based treatment facilities, and authorizes the Secretary to carry out a demonstration program of compensated work therapy and therapeutic transitional housing. The committee was able, in this bill, to ease somewhat the burden on surviving spouses otherwise entitled to DIC whose remarriages had ended, and to provide insurance coverage to the National Academy of Sciences to ensure that the agent orange review called for in Public Law 102-4 would in fact be performed.

EDUCATIONAL ASSISTANCE AMENDMENTS

On October 10, the President signed S. 868, the "Veterans' Educational Assistance Amendments of 1991." This measure, now Public Law 102-127, improves educational assistance and employment benefits for servicemembers and reservists who served us all so well in the Persian Gulf war. It ensures that their absence in defense of our country will in no way prejudice full use of their veterans' educational benefits. We owe these brave men and women nothing less.

NATIONAL CEMETERY OF ARIZONA

On November 5, the President signed S. 1823—now Public Law 102-151—which was a critically needed measure to ensure that the National Cemetery of Arizona could remain operational. This bill, while limited, demonstrates the remarkable bipartisan nature of our committee and its ability to get things done quickly.

1992 COLA

Finally, on November 12, the President signed Public Law 102-152, the "Veterans Compensation Rate Amendments of 1991." This measure—again representing swift and decisive action by the committee—authorized a 3.7-percent cost-of-living allowance in the rates of disability compensation paid to service-disabled veterans and of dependency and indemnity compensation [DIC] paid to the survivors of veterans who die as a result of service. The increase will be effective December 1, 1991. I am pleased to note that our ability to pass this unencumbered measure so quickly ensures that disabled veterans and their survivors will receive their increases in their January 1992 checks.

CONCLUSIONS: A RECORD OF LEADERSHIP AND DEVOTION TO VETERANS

Mr. President, the record of our committee this session in providing en-

acted laws for our Nation's veterans is unmatched by any full Congress convened in the decade I have had the honor to serve in this body. It speaks well of the devotion and respect we in the Congress—and particularly those of us fortunate enough to serve on the Veterans' Committees—hold for those who defend our Nation.

I am proud to have had the opportunity to be in a leadership position on the Senate Committee on Veterans' Affairs during this remarkable session. But I am most proud of what we have been able to accomplish in such a short period of time for such a deserving and special group of our fellow citizens.

I look forward to a second session of hard work and more results for veterans.

MEDICAID CONFERENCE REPORT

Mr. RIEGLE. Mr. President, the Conference Report on H.R. 3595 must be approved by the Senate today, otherwise regulations proposed by the Health Care Financing Administration [HCFA] on September 12 would be in effect in January 1992. These regulations would have a devastating impact on a State's ability to finance its portion of the Medicaid Program. Millions of vulnerable low-income families and children who need health care services in Michigan and other States could be affected.

As chairman of the Finance Subcommittee on Health for Families and the Uninsured which has jurisdiction over the Medicaid Program and a Member of the House-Senate Conference on this issue, I urge Members to support this conference report which embodies the proposal put forth by the National Governor's Association and the administration with some modifications that I consider improvements to the plan.

Mr. President, we are presented with this problem today because the administration refused to withdraw the HCFA regulation relating to the use of provider donations and taxes by State Medicaid programs. I would have liked to have more time to consider the options and their implications, as the Finance Committee recommended last Friday, but that proposal was unacceptable to the administration.

I am pleased that in the conference we were able to make some improvements for hospitals that serve a disproportionate share of low-income of Medicaid patients. Conferees agreed to a proposal to give States, in 4 years, the option of continuing under the 12-percent national expenditure cap in the NGA-administration proposal or following specific criteria relating to how a State designates its disproportionate share hospitals and not being subjected to the 12-percent cap. The agreement specifically ensures that Michigan can continue to designate disproportionate share hospitals in the manner they do today, if they choose to, and spend beyond the 12-percent expenditure cap.

We desperately need this type of flexibility in Michigan because many hospitals continue to serve low-income or uninsured people and many of these hospitals face additional burdens due to recent cuts in financing health care services made by Governor Engler. In Michigan, over one-third of our hospitals are disproportionate share hospitals and receive special payments under Medicaid because they serve many low-income, Medicaid or uninsured patients. It's also important to note that Michigan's program clearly meets Congress' intent of providing enhanced payments only to hospitals that serve a disproportionate number of Medicaid and other low-income patients.

Mr. President, I still have reservations about why we must address the issue of Medicaid's disproportionate share hospitals in the NGA-administration plan when the real problem of taxes and donations have been addressed by requiring taxes to be broad-based and capping their level of use at 25 percent of a State's Medicaid expenditures. The conference report, however, is the best we can do under the current circumstances and I urge my colleagues to support the conference report.

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

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

The legislative clerk proceeded to call the roll.

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

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

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

The ACTING PRESIDENT pro tempore. There has been no order.

Mr. REID. I ask unanimous consent that I be allowed to proceed as in morning business.

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

SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. REID. Mr. President, we spent considerable time on this floor last night talking——

Mr. SYMMS. If my colleague will yield, I have a parliamentary inquiry. Last night, and now this morning, the Senator from Nevada and others are going to be talking about the Surface Transportation Efficiency Act. Will those comments all be shown in the permanent RECORD as part of the debate on this conference report?

The ACTING PRESIDENT pro tempore. It would take unanimous consent.

Mr. SYMMS. I ask unanimous consent that when the permanent RECORD is done, that all of the remarks that were made yesterday and those today that were not actually on the debate on the conference report, because it was not present, be part of the debate on the conference report, because it would be easier for people doing research to look up that situation.

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

Mr. REID. Mr. President, I join with the Senator in that request.

We talked a lot last night, and we heard Senator MOYNIHAN give a historical narrative as to how this bill developed and how it has culminated in this piece of legislation, which will probably be the most important piece of legislation to come out of this Congress. It will provide jobs for millions of people and also do things that have needed to be done for years. That is, put emphasis on maintenance, not building new roads. This legislation puts a significant emphasis on repairing the deteriorating infrastructure that we have, rather than building new roads. As a result of the formula which is built into this legislation, that States will be able to repair roads cheaper than they can build new roads. The allocation will be 90–10 for reconstructing, repairing roads, compared to 80–20 on new roads.

There are all kind of things built into this legislation that were spoken about in detail yesterday. There was also significant talk on the Senate floor last night about how difficult it was to arrive at this place where we are now today. Since last night, the House has passed this overwhelmingly. The vote was 340 to 75, or something like that. It was passed overwhelmingly. That is as a result, I think, of a unanimous agreement among conferees. When I say unanimous agreement among conferees, I did not mean to say that the Democratically controlled Senate agreed and the Democratically controlled House agreed, but I am saying this was a bipartisan agreement. The Republicans in the Senate agreed with the Democrats in the Senate. The Republicans in the House agreed with the Democrats in the House, and the conference was unanimous, not a perfect piece of legislation, as we have talked about, but a fine piece of legislation.

Mr. President, the reason I take the floor today is I want to make sure the record is spread with a person who was instrumental in arriving at this piece of legislation. We see, and the American public sees, on almost a daily basis, the majority leader of the Senate, the senior Senator from Maine, Mr. MITCHELL. Senator MITCHELL is here every day trying to work out procedures in the Senate, trying to get things done, trying to move legislation, and trying to take care of problems that he has with his own Democrats, trying to placate the Repub-

licans, and trying to get legislation moving. So we in the Senate and the American public have seen Senator GEORGE MITCHELL many, many times.

But something that people do not realize enough is that he is still a Senator from the State of Maine. There was never a better illustration of this than during the conference on the surface transportation bill. He was a conferee. He is one of the ranking members of the Environment and Public Works Committee in the Senate. He worked along with us to arrive at what I feel is national legislation of significance.

He was there to tell us that this Congress is not going to adjourn unless you conferees, of which he was a member, worked out an agreement. We could talk, we could talk, we could talk, but there came a time when it was necessary, according to the majority leader of the Senate, as one of the conferees, that we come up with legislation. It was as a result of his patience, leadership, and his deliberation and his wisdom that we were able to arrive at this conference, which I again say was approved unanimously by the conference. Easterners were on this conference, people who represented the Northeastern part of the United States, and people from the far West. No one group was more outnumbered than Western Senators. But we have a bill that we are not overjoyed with, but it is a bill we are happy with. It is good for the Western part of the United States and for the country. This would not have come about but for the leadership of one of the conferees—the senior Senator from the State of Maine, GEORGE MITCHELL.

So even though we are not going to talk a long time today, there are a lot of things that need to be done. I and the rest of the conferees, I am sure, recognize the importance of the majority leader as a conferee. He sat at the table with us and was one of the conferees and had but one vote. But the information he imparted really showed, and his ability really showed, during the 2 weeks of deliberations on this bill.

Mr. SYMMS. Mr. President, I would like to join my good friend from Nevada to also express my thanks to the majority leader for the role he played in this. I have said many times that I think being majority leader of the U.S. Senate, if it is not the second hardest job in the United States, it is certainly in the top four or five difficult jobs in the United States. The majority leader gets very, very little time away from work, because every day someone is calling him asking him to keep an area open for 2 hours here or 2 there. And there are 99 other Senators he has to deal with. It is difficult, and he has been very accommodating and has tried hard to help us get around difficulties that each one might have with respect to scheduling and other things. I thought it was notable that on Sunday, when many people think that the majority leader is probably one of the important people in the country and is having time to himself, he had been asked to be a guest at the Washington Redskins-Dallas Cowboys game.

While we were in conference he was unable to go because he was at a conference with the rest of us, and as the score trickled in I leaned over to him, because I was seated next to him. I said, "Well, GEORGE, maybe this might have been a good day that you were here instead of over there as a guest of the owner of the Redskins that day to see the game."

But I have to say that his dedication and his efforts have been very helpful to get this conference to come to an agreement and keep it moving. I share in the comments of my colleague from Nevada that we appreciate the efforts on behalf of the bill and I think Westerners appreciate the fact that he has helped us push this bill along.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. SYMMS. Certainly, I am happy to yield.

Mr. REID. As was mentioned last night, there is a lot being said about Congress, a lot of problems in the country and the world and we are getting blamed for a lot of them, some of them rightfully so.

But with the Senator's experience as a Member of the other body, and a Member of this body, does the Senator not think, based on his experience, that this highway bill, this surface transportation bill, is one of the finer moments of Congress? We were able to be bipartisan, set partisanship aside, set regionalism aside, and come up with a peace of legislation which I think is good for the country. Would the Senator's experience indicate the same?

Mr. SYMMS. I totally agree with that. I think the good Senator from Nevada knows it is a good piece of legislation. We have tried very hard to help those States that do not feel like they are getting quite as good a deal as they would like to get.

I point out to my colleagues that because of this conference, and all the Senators on the Environment Committee, primarily, we worked very hard to see that those States are doing better than they were before.

I invite Senators to look at some of the charts and look at how much money was spent on highways for the last 5 years, how much their State got, and then look at how much will be spent for the next couple of years and how much their State got and compare those percentages of the program. I think they will see that all of those donor States have come up and are doing better. There are a couple of instances where States may not look like they are doing as well because they had a big project that they now do not have, but in the overall program we have tried very hard to see that every State is doing better than they were, and there were a few States that are donee States that are not doing quite so well. That is where the conference comes. I agree with my colleague.

I see the majority leader is on the floor, and I think we both have expressed our appreciation for his efforts to make it possible we could get this conference report here.

I yield the floor.

INTERNAL REVENUE CODE OF 1986 AMENDMENTS

The PRESIDING OFFICER (Mr. WELLSTONE). Under the previous order, the Senate having received H.R. 3909, which is identical to the text of S. 2042 as reported by the Senate Finance Committee, the House bill is deemed read three times and passed, and the motion to reconsider is laid on the table.

So, the bill (H.R. 3909), was deemed read a third time and passed.

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

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

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

Mr. DURENBERGER. Mr. President, I rise to compliment my colleagues on the Environment and Public Works Committee and the Public Works Committee of the House on the splendid work that has been done over the last year and a half, particularly the last few 17 and 18 days, on the Intermodal Surface Transportation Efficiency Act of 1991, and to urge all of my colleagues in this body to support the unanimous recommendations of the conference committee on the adoption of what used to be called the highway bill.

I have served on the committee since the early eighties. This is my second experience with a transportation reauthorization bill. Coming from the State of Minnesota, this bill is the one that comes closest to, I might say, meeting my own personal expectations, for what a national transportation bill ought to be.

I must say, not just because he is on the floor, it would not have been what it is nor would it be able to achieve what it promises by way of potential had it not been for our colleague from New York, Senator MOYNIHAN. The vi-

sion that he has for transportation in this country and the vision that he has for the role that transportation plays in commerce and in transporting people is without parallel in this body. It has been a pleasure to work with him.

I must also say that working, for the last time, apparently, with my colleague, STEVE SYMMS from Idaho, has been just another delight. It was in 1986, as I recall, that we last did a surface transportation bill. The Senator from Idaho, who at that time chaired the conference committee, had to go eyeball to eyeball with his very close friend and our President, Ronald Reagan, and say no to the President when he wanted to veto the bill. That was just one example of STEVE's courage, and we saw it again this year in a variety of ways. He has that rare ability to combine courage with a great sense of humor and the ability to laugh at himself and, on occasion, laugh at us in a way that is not offensive.

JOHN CHAFEE did a great job in chairing our Republican side as well, and the other conferees on both sides. Our majority leader, GEORGE MITCHELL kept this bill on track and pushed the conferees to act on the many tough decisions that were made. HARRY REID from Nevada was nice enough to compliment my work on the committee last night, and I must say that on both the Environment and the Public Works side of our committee, it has been a real pleasure to get to know him through his work as well.

It was a pleasure to again participate in a conference with my colleague from New Jersey, FRANK LAUTENBERG, with whom I try to carry on the work of the Subcommittee on Superfund and allied poisonous disposals across America.

The conference was not quite as difficult for him as it was for the rest of us because of the stellar role played by the chairman of the conference and the chair of the House Public Works Committee, the Congressman from New York, BOB ROE, who I would certainly single out in complimenting people, as well. I got to know Bob Roe in the National Water Alliance when we cochaired that particular effort with DENNIS DECONCINI. At that point, I began to appreciate his commitment to infrastructure in this country. I think all of us who spent time on this conference learned to appreciate his abilities and his skills and they all came out in his very first conference as chairman of that committee with a very, very difficult, almost impossible, task that I thought he handled very well.

The entire House leadership, JOHN PAUL HAMMERSCHMIDT, BUD SHUSTER, and NORM MINETA, worked diligently to produce a final product that moved us out of the interstate era. Each of them is an expert in the field.

I also thank our distinguished committee chairman, QUENTIN BURDICK, and Congressman TOM PETRI for their work in protecting the Midwestern States. Their input has ensured that Minnesota and its neighboring States benefit from the many jobs created by this bill and its tremendous boost to rural economic development.

Mr. OBERSTAR, the senior Congressman from Minnesota, is to be commended for his work on behalf of northern Minnesota, as well as his attention to matters that relate to the State as a whole. His work on the scenic byways, as well as his provisions benefiting bicyclists and pedestrians, will be appreciated as both a recreational and truly intermodal expansion from current transportation policy.

Our colleague, JOHN WARNER, handled his dual or triple role defending the Bentsen provisions or the FAST provisions for the so-called donor States, plus the interests of Virginia and the highways on which we ride all the time to and from work, in an incredible fashion.

Mr. MOYNIHAN. And the airports.

Mr. DURENBERGER. And National and Dulles Airports, as well. At this time, I also want to take the opportunity to thank the staff members who worked very hard and very long hours to complete this conference. I'd like to especially recognize the efforts and leadership of the committee staff Roy Kienltz, Mike Wiess, Jean Lauver, and Taylor Bowlden.

Mr. President, does my colleague with to speak?

Mr. MOYNIHAN. Yes.

Mr. President, I simply want to say it would be characteristic of the Senator from Minnesota that he would speak of what others have done in this legislation, which is epic legislation. Of the two or three transportation bills that passed this Senate in two centuries, this is surely one of the most important. And in it, we establish a national highway system, something we have not ever done, the logic of having creating the Interstate and Defense Highway System we would not take from our major roads the then primary arterial roads.

This was offered by the Senator from Minnesota here on the floor as an amendment, adopted, I think, unanimously by the Senate, and now part of this legislation. It is not going to be an easy thing to do. We are going to have to pick from among about 150,000 miles some 110,000 miles, perhaps a little more; there is a little leeway. Then we are going to have to define what we mean by this, what we want by it, what timeframe, what amounts of resources—lots of defining.

It took 40 years to build the interstate and longer than that to get it from the time it got started. It will not take 40 years to put the National Highway System together. Its roads exist now. But to put them in the shape we want them and in the design that we desire is a 20-year project. If you do not have 20 years to spare, do not get into transportation.

But it is for that reason I am particularly pleased that the Senator from Minnesota has made this his project, and I think it should be on notice that we expect him to stay here for 20 years in the U.S. Senate, to see to it being done, and when that time comes, I hope that he, as a very senior Senator, will speak to someone as I am now speaking to him, saying "Now, your job for the next 20 years is as follows."

But, Senator DURENBERGER, you are hereby assigned 20 years labor on the National Highway System, and in the end, they will—who knows—they will name a bypass for you. You have the great gratitude of your conferees, as you know, and the respect of this body.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Minnesota is recognized.

Mr. DURENBERGER. I appreciate the compliment. It seems to me somewhere within the last 20 to 24 hours I listened to somebody suggest that we name Superfund sites for Senators and now I have heard the possibility we will have bypasses named for Senators. I hope I am just fortunate enough to be here as long as PAT MOYNIHAN is here and to have the opportunity to continue working with him.

Yesterday, in the middle of all of this, I understand I thought I was too busy to go to the Finance Committee meeting on taxes, since they seemed to be irrelevant at this particular point in time. I did not know what was going on at the White House and with NEWT GINGRICH, but I understand the senior Senator from New York took about an hour to engage in a discourse with the Director of the Congressional Budget Office, Bob Reischauer, on the impact of the tax system on the economy and on the people of this country and to go into his usual concern about the families of America and the people of America, their earning capacity, the way in which the tax system relates to that capacity to their value systems to their ability to be families, the kinds of things that I have always enjoyed sitting and listening to him discourse with others as it relates to social policy, behavioral science, that apparently have not arrived here yet, other than in our own personal manifestations. I just think it is incredible in the middle of everything that he was doing and I thought we were doing yesterday, that he took that time to push our understanding a bit farther about the significance of tax and economic policy and fiscal policy and budget policy in this country as well. So I appreciate that.

Mr. President, it seems to me there are three ways for this Senator, at least, to look at a transportation bill.

One of them is personally, the way we have just done. The second way is as it relates to our constituencies. And a favorite way around here, Mr. President, as you are coming to know, is to wait for the sheet to come out. The sheet that has the names of our 50 States that we represent on the far left-hand side and then across a series of dollars and allocations.

There is probably not an elected Representative born or elected in this body or in the other body who, when handed one of these policy sheets, does not immediately find his State and run across the columns to find out how we relate, dollarwise, one to the other.

Unfortunately when we talk about highways and transportation and spending $119 billion of our gas taxes over 6 years on highways, too many people spend their time looking to see how they relate to somebody else rather than looking at the larger policy issues that are involved.

This is important, and I have done it for Minnesota. I am proud to say that Minnesota, from being a donor State last year—meaning we got back less than we put into the pot—will in the next 6 years be a donee State. We are going to get back more than we put into the pot.

But I would daresay that besides the efforts of JIM OBERSTAR and this Senator, who are both members of this conference committee, the more important issue is that Minnesota believes in a national policy and Minnesota believes it will benefit from a national policy.

Minnesota transportation planners push in the direction of intermodal transportation. It is because we are a State that thinks and plans ahead and has some vision and employs the kind of public servants in the State to do it, that we are moving in that direction. As the Nation moves in the direction of an intermodal surface transportation policy, we benefit from that as well.

That is the third way to look at these issues, as policy issues. I think, in effect, that is really what we were elected to do here. When you look at a surface transportation bill like this, there are three ways to look at it. Energy, environment, and infrastructure are the three principal policies here. We have had an energy bill floating around this place ever since I have been here, and we had no energy policy. We still have no energy policy. The so-called energy policy presented this year was not an energy policy bill and, appropriately, it was prevented from being acted on here on the floor.

So, as we come to a transportation bill, of course we are talking energy, and we ought to be talking about an energy policy in this country. The key to an effective energy policy is the way in which the efficient use of fuel-consuming transportation systems are developed and used in this country.

The second thing I mentioned was the environment. I think last year we did both energy policy and transportation policy in the Clean Air Act. There was a lot of environmental policy, and a certain amount of infrastructure work.

In this year's Intermodal Surface Transportation Efficiency Act we are going to find a whole new section entitled "Congestion and Air Quality," with a total expenditure of $6 billion nationwide. And then you are going to see the same kind of approach to the relationship between the Nation's environmental policy, its energy policy, and its transportation policy built into a variety of these other expenditures.

I am pleased to see that. It is one of those areas in which it gives me a great deal of pleasure to work in a nonpartisan or bipartisan way to develop national policy and use the expenditures that come from a gas tax fund to do it.

The third, of course, is infrastructure, and all of this is infrastructure maintenance, building, and rebuilding. Again, as we know from our colleague from New York, this Nation does not have a specific infrastructure policy. We go at it in sort of fits and spurts. And this is the fund that builds concrete and asphalt. We use the trust fund for that purpose, and we keep trying to expand its purpose for rail and other forms of transportation. But I think this year we have begun to make a breakthrough. The work in here on high speed rail, on magnetic levitation, on transit alternatives, all of that is an important expansion of the Nation's infrastructure policy.

A little known fact that I sometimes forget, I think I am still the chairman of the Japan-United States rail conference, and the chair of the France-United States rail conference, which comes from efforts in the early 1980's to bring Japan, France, and the United States closer together on high speed rail and then magnetic levitation.

This bill is going to do about three-quarters of a billion dollars of work in that regard.

Mr. President, I am pleased that the Senate will soon have the opportunity to vote on the Intermodal Surface Transportation Efficiency Act of 1991.

I want to commend the outstanding leadership of my conference chairman and friend, PAT MOYNIHAN, for his efforts to bring this measure through the process prior to adjournment.

Mr. President, as a member of the conference committee, I approached this legislation by asking the question: What should be the Federal Government's role in the postinterstate era? The construction and maintenance of our Nation's transportation infrastructure depend on the close cooperation and coordination of the Federal, State and local governments. Government intervention is vital in designing feasible routes, covering the cost of constructing public highways, and developing harbors and waterways. A safe and efficient transportation network is a necessary component of a competitive economy and a unified country.

The highway program as we know it, expired 2 months ago. It looked for a long time like this bill would not be finished before the end of the year. Passage of the bill before us has garnered national attention because State Departments of Transportation have been left with no Federal assurance of a continuing program. If this bill is not passed before Thanksgiving, more and more States will not be able to let contracts that will ensure construction schedules are met. This is especially critical in the State of Minnesota because of the short construction season. The bill before us means 81,700 Minnesota jobs over the next 6 years and with passage of this bill, Minnesota will be able to receive funds in a timely manner.

I believe we are taking the correct approach in providing States with greater flexibility to apply highway trust funds for multimodal uses. The purposes of a 6-year highway bill is more than just cutting up the pie, so to speak. This bill should define the role of the National Government in surface transportation. It should give direction. It should set priorities. And as only a national government can do, it sets out a standard of what our transportation system should look like into the next century.

There are four aspects of the national policy we are defining that I want to mention here at the outset.

The first is a National Highway System. This is one of the most significant changes in highway policy since the beginning of the Interstate System 35 years ago. I support the concept that we need a defined National Highway System as a focal point of our transportation planning. It ensures the taxpayer that a substantial portion of the highway trust fund will be spent on the rehabilitation of those highways which are most critical to interstate travel and commerce.

The second is safety. There can be no more basic Federal role than protecting public safety. This bill puts the Federal Government back into a leadership position on highway safety. I am pleased that the conference agreed to maintain a separate safety category for hazard elimination and rail-highway grade crossing projects.

The third is technology and innovation. The conference adopted the Lautenberg-Durenberger national intelligent vehicle highway system bill. Minnesota is a recognized leader in developing and implementing advanced technology to make highway travel faster, safer, and cleaner. We will benefit from the additional Federal investment in this field.

The final national objective in a highway bill should be flexibility. I frankly think the Congress wastes a lot of time and money micromanaging decisions within States that have nothing to do with national purposes. Before we start favoring urban over rural, maintenance over construction, or lower cost bridges over discretionary funds, we should remind ourselves that the best solutions come from those closest to the problem.

Mr. President, I think this is a good bill for America, but I also want to say a few words about what this bill means to Minnesota. In this respect, I commend my colleagues and fellow conferee, JIM OBERSTAR, for his hard work in protecting Minnesota's interests. I think Minnesota greatly benefited by having representation on both sides of the negotiating table.

The biggest battle for all involved has been in the determination of a new funding formula. The new funding formula will mean that Minnesota will now receive more highway funding than it puts into the trust fund through gas taxes. Last year, we only got back 94 cents on our tax dollar. Under this bill, we will receive $1.02 for every $1 put in by Minnesotans.

In this bill I established a Minnesota Safety Initiative Program which provides funds to the State Department of Transportation to carry out projects concerning cold weather pavements and retroreflective pavement markings and signs to demonstrate the safety benefits for nighttime driving. This bill also provides $6 million to the University of Minnesota, Center for Transportation Studies to establish and operate a national institute for intelligent vehicle-highway concepts.

As a member of the conference committee, I was able to convince my colleagues of the merits of six essential Minnesota projects: $40 million for the Bloomington Ferry Bridge; $36 million for Highway 610 in Brooklyn Park; $10 million for the south Mankato bypass; $3 million for a Highway 41 project in north Mankato; and $3.24 million for trunk Highway 15 in St. Cloud. I also commend my colleagues in the House, especially JIM OBERSTAR for several projects they were able to obtain funding for. These are priority projects that Minnesotans need to get to work and move their goods to market, and will make us stronger economically. This is a good bill for Minnesota, and is the product of many hands. It results from Governor Carlson and his Department of Transportation making their needs clearly known, a receptivity by the Secretary of Transportation to our requests, and the congressional delegation working together to get the job done.

Mr. President, the package before us exemplifies the customary leadership of the Senator from New York. I commend my colleagues and their staffs for their willingness to work through the problems to the satisfaction of everyone involved. A wide range of States were represented on this conference. Not only did the conferees bring an array of ideas and beliefs, but the individuals worked well together to produce the final product before us in such a short time.

Mr. President, the Intermodal Surface Transportation Efficiency Act of 1991 provides a strong commitment to transportation needs and a source of both productivity and jobs. I am proud to have been a part of a product that sets the transportation policy that will move this country forward.

The PRESIDING OFFICER. The majority leader is recognized.

MEDICAID VOLUNTARY CONTRIBUTION AND PROVIDER-SPECIFIC TAX AMENDMENTS OF 1991

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3595.

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

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 3595) entitled "An Act 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," and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, that Mr. DINGELL, Mr. WAXMAN, and Mr. LENT be the managers of the conference on the part of the House.

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

The motion was agreed to, and the Presiding Officer appointed Mr. BENTSEN, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. PACKWOOD, and Mr. DURENBERGER, conferees on the part of the Senate.

Mr. MITCHELL. Mr. President, this will enable the conferees to proceed promptly with respect to the Medicaid moratorium bill. The Senator from Minnesota is one of the conferees and one of those principally involved in the writing of this legislation. I hope very much we are going to be able to get a conference report before the Senate today so that this important matter can be disposed of in a way that I think will be satisfactory to most concerned.

I thank my colleagues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I ask to proceed as in morning business.

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

THE HIGHWAY BILL

Mr. LIEBERMAN. Mr. President, as we come, soon, to vote on a conference report on H.R. 2950, the Surface Transportation Efficiency Act of 1991, I rise to extend my congratulations, my gratitude, my admiration, in some senses my awe, to our truly visionary leaders for their monumental effort in putting together this outstanding piece of legislation.

Above all, I congratulate my friend and esteemed colleague from New York, Senator MOYNIHAN, who has wisely referred to this legislation as an once-in-a-half-century opportunity.

When I was elected to the Senate, because of my interest in environmental protection, and my previous post of attorney general of Connecticut, I sought membership of the Environmental Committee. I was grateful to have an opportunity to become a member.

With that membership came a bonus, and that was the public works part of the committee and the opportunity to work under the leadership of the Senator from New York. Each of us, as we know, from our birth is special. But I would have to say the Senator from New York is particularly special, and in his service elevates this institution and every individual who serves in it. I think we saw the full range of his skills in his handling of this particular piece of legislation.

I remember once reading an article about the Senator from New York. Somebody had said he had gone from Hell's Kitchen to Harvard. I would say he took with him the best of both experiences and put both of those experiences to work in his remarkable handling of this bill.

The Senator from New York is at once an actor and a analyst. He, more than anyone I have met in my political life, both lives in the present and influences the present, but does so with a profound and extraordinary sense of the past, our history. Also, I think, with a prophetic reach for our future. All of that is seen in this bill.

When our committee began its consideration of this bill, though the last couple of weeks in which the Senate and House have focused on this surface transportation bill have focused very often on numbers and formulas, we did not begin with the numbers and formulas. He took us back a few steps to a vision, to examine what influence transportation policy, particularly over the last 40 years, has had on the development of America, and what effect what we were doing might have on the future of America. I think we all came to understand how intimately related transportation policy is to so

many other parts of what we worry about in America: Our energy policy, our environmental policy, the quality of our lives.

One of the witnesses that the Senator from New York brought before our committee said, paraphrasing that wonderful movie, Field of Dreams, in which the voice says to the Kevin Costner character: If you build it, he will come. What we have found over the last 40 years of the great Interstate Highway System was if we built it, they would come.

It would affect the ways in which people would move around this country; it would affect the cities in which they live; it would affect the quality of our air; it would affect ultimately the quality of our lives.

I think the Senator from New York took us from that vision and that understanding of the impact of our work to the details of the proposal. That is truly extraordinary. I congratulate him on his leadership, and also add to that my thanks to Senators BURDICK, SYMMS, and CHAFEE. Because of their leadership, this Congress has seized this opportunity and truly has produced a bill that will take America into the 21st century and will have a lot to do with how America will look and how Americans will live for generations to come.

Mr. President, as time allows, before we proceed directly to the surface transportation bill, I would like to say a few words of explanation about why I think it is such a significant bill. Perhaps most importantly in the near term, this bill really will put people to work building and maintaining the bridges and roads in constructing mass transit systems and equipment.

In the short run, I think it is the strongest step that we can take to deal with the recession we are in now. Once those roads and bridges and systems are built or improved, this bill will put more people to work in the businesses that always grow when infrastructure is improved. That is one of the facts that we learned in the course that the Senator from New York led us through in our subcommittee.

This bill is one of the most effective actions Congress can take to help America not only out of the recession, but on to the higher road of long-term economic growth. Simply put, the bill will mean millions of jobs for American workers.

I would like to mention just a few elements of the legislation that I think are most important. First, the bill places a strong emphasis on maintaining the highway system that we have already built.

Today, we face a crisis in maintenance. The fact is that if our highways were a heart, we would be in intensive care today. Almost one-half of our bridges are structurally deficient or functionally obsolete. Disasters are quite literally waiting to happen. So the funding in this bill, which will be available for maintenance of our roads and bridge repair, will really help us to reverse that trend and avoid those disasters.

Second, recognizing that transportation is closely linked to the quality of life for the American people, this bill gives the States greater flexibility in using highway funds to solve their particular transportation needs. That is a dramatic shift from the past.

We do not seek to favor one form of transportation over another. Rather, we accept that different parts of our country have different priorities. For some, roads are necessary, new roads; for others, repair of existing roads is the No. 1 priority. And still others may wish to emphasize mass transportation.

This bill will let every State make the most of the transportation money this bill provides them.

Let me be more specific. My own State of Connecticut is faced with a serious air pollution problem that is directly linked to vehicular emissions, auto emissions. Under the Clean Air Act we passed last session, Connecticut and many other States risk the loss of all highway funds if we do not reduce smog. By providing that both funds from the surface transportation program and the national highway system are fully flexible for nonattainment areas, this bill will give my State of Connecticut and States with similar problems the ability and the discretion to better manage transportation demand and achieve our clean air goals.

Third, the bill provides for a much closer coordination between our efforts to tackle clean air and our efforts to move our people. Unfortunately, in the past these programs have often worked at cross purposes. For the first time this bill will result in transportation and clean air planning coming together.

Fourth, the bill ensures that the primary burden of highway spending will not be shifted to our already financially burdened States. The administration's proposal submitted at the beginning of this session would have required a dramatic increase in the State contribution for each Federal highway dollar—a proposal, I must say, which would have hit Connecticut's taxpayers particularly hard given the effects that the recession has already had on us. Congress, by enacting this bill, wisely rejected the original administration proposal.

And fifth, the bill will ensure—and this is a local and personal concern—that larger, twin-tandem trucks and triple tandems will not be allowed in States such as Connecticut that simply do not want them and do not allow them.

Mr. President, in my previous capacity as attorney general of Connecticut, I attempted to stop the entry of these first generation tandem trucks—smaller than the ones that now exist in many states. Unfortunately, that effort of ours was thwarted because of the existence of the Federal law that essentially preempted our ability to control the safety of our citizens on our highways.

It is a problem that has troubled me for a long time. I am particularly happy to be in the Senate at this moment as we ensure that people in States like Connecticut, that do not want larger tandem trucks on our highways because they represent a threat to public safety, will not have to accept them.

Mr. President, overall, this is a remarkable bill. It supplies the vision that has been too often lacking in the construction of America's transportation systems, the kind of vision that Senator MOYNIHAN has possessed and expressed for decades.

If I may be allowed this comment, I believe that had Senator MOYNIHAN been vested with the power to decide how transportation funds were spent for the last 40 years, America would be a vastly different place today. Our air would be cleaner, our cities would be more vibrant, certainly more integrated, and our highways would be less crowded.

We in Congress are often criticized for overstating the significance of our actions and very often that criticism is well taken, but when it comes to this bill I do not think it is possible to exaggerate its importance to this Nation.

Finally, Mr. President, I commend the outstanding work of the staff of the Environment and Public Works Committee and of Senator MOYNIHAN himself for their remarkably phenomenal efforts on this bill. In particular, I would like to thank: Roy Kienitz, Andrew Samet, Rob Connor, Richard Eaton, Tim Bernstein, David Strauss, Mike Weiss, Jean Lauver, George Schaener, Steve Shimberg, and Taylor Bowlden. Their efforts represent truly the best in public service.

I appreciate the unfailing courtesy and graciousness that they and their employers have extended to me and my staff in consideration of this bill.

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

Mr. MOYNIHAN. Mr. President, might I thank the Senator from Connecticut for his extraordinary generosity?

Characteristically, he omitted to mention the extraordinary contributions he has made to this legislation. He knows how grateful we are, and how even more grateful we will be when the leaders pass it by voice vote.

Mr. MITCHELL. Mr. President, I do want to associate myself with the remarks of the Senator from Connecticut about the Senator from New York. As one who has struggled with him

through three highway bills over 12 years, including a very long weekend this past weekend, indeed, as we sat in a conference meeting just a few feet from here at midnight Saturday, I was sitting between the Senator from New York and the Senator from Idaho, and I wondered to myself about what we were doing here at midnight on a Saturday night.

Of course, it was under the leadership of the Senator from New York and the Senator from Idaho, acting on what I believe to be as significant a piece of legislation as we will act upon in this Congress, and by some measures, in many Congresses. It was due to the tremendous leadership and, I might say, persistence, perseverance, and patience of the Senator from New York and the Senator from Idaho that we were able to get to this point.

I join in a tribute to them and thank them for their tremendous leadership and generosity of spirit that has enabled us to reach this point. And we hope we are going to be able to agree to the conference report soon.

TECHNICAL CORRECTIONS TO CERTAIN APPROPRIATIONS ACT—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on House Joint Resolution 157 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant 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 joint resolution (H.J. Res. 157) making technical corrections and correcting enrollment errors in certain acts making appropriations for the fiscal year ending September 30, 1991, 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. Without objection, 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 26, 1991.)

Mr. BYRD. Mr. President, the conference agreement on House Joint Resolution 157, the dire emergency supplemental appropriation bill, contains appropriations totaling $6,889,600,000. Of this amount, $4,083,500,000 is provided for additional costs of Desert Shield/Desert Storm and will be derived by transfer from the defense cooperation account. In addition, language restricting arms sales to Saudi Arabia and Kuwait until these countries fulfill their commitments to the support of Operation Desert Shield is included in the bill. This prohibition would not go into effect until 120 days after enactment.

As a result of amendments attached to the Conventional Armed Forces in Europe Treaty, $400 million is available from defense funds for the destruction of nuclear weapons in the Soviet Union. An additional $100 million is available from defense funds for the transportation of humanitarian aid to the Soviet Union.

For the disaster assistance program of the Federal Emergency Management Agency [FEMA], total appropriation of $943 million is provided, of which $800 million will be designated as "emergency spending" by the President and an additional $143 million will become available upon receipt of an emergency budget request from the President. This amount will be sufficient to meet FEMA's costs for all outstanding prior year disasters and a normal level of disasters for the remainder of the fiscal year.

For the disaster payments to farmers and ranchers required to compensate them for losses suffered from natural disasters during 1990, 1991, and 1992, a total appropriation of $1.75 billion is provided. Of this amount, $995 million will be designated as "emergency spending" by the President for disaster payments authorized for crop year 1990 and crop year 1991. Payments are available for losses which occurred in either 1990 or 1991, at the producer's option. The remaining $755 million is for crop years 1990, 1991 and 1992, and shall be available only upon receipt of an official budget request. Of this $755 million, an amount of $100 million has been set aside to finance losses of crops planted in 1991 for harvest in 1992.

It was necessary for the conference to delete the $100 million for the Special Supplemental Food Program for Women, Infants and Children [WIC], the $1.2 billion for the Head Start Program, and the $90 million for the childhood immunization program because the administration refused to designate these funds as "emergency requirements" under the provisions of the Budget Enforcement Act. The administration indicated that its rationale was not that these programs lacked merit, but rather that there is no sudden or unanticipated requirement for the very large increases proposed which would constitute an emergency requirement under the Budget Act.

More specifically, the regular fiscal year 1992 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act provided $2.6 billion for the WIC Program, an increase of $250 million or 10.6 percent over the fiscal year 1991 level. Moreover, I wish to point out that since 1980, Congress has increased WIC funding by 253 percent, resulting in average monthly participation increasing from 1.9 million persons in 1980 to 4.9 million persons in 1991.

With regard to the Childhood Immunization Program, the fiscal year 1992 Labor, Health and Human Services, Education Appropriation bill already includes $297.8 million for this purpose, an increase of $80.3 million over the fiscal year 1991 level.

The same bill includes $2.2 billion for Head Start, which was an increase of $250 million over fiscal year 1991. The administration indicated that an additional amount of $1.2 billion for the Head Start Program would constitute a 54-percent increase over the recently enacted fiscal year 1992 level of $2.2 billion. If the increases in the fiscal year 1992 appropriation and supplemental bills were combined, the administration argued that the increase from fiscal year 1991 to fiscal year 1992 would be 74 percent, at a time when appropriations for the Head Start Program had already increased by 78 percent from fiscal year 1989 to fiscal year 1992.

Consequently, in view of the tight budgetary constraints the administration refused to designate these additional funds as "emergency requirement."

In summary, I believe the Dire Emergency Supplemental Appropriation bill for fiscal year 1992 is a good bill. It does not provide everything each Member may have wanted. However, it was necessary in conference to compromise with the House and take into account the views of the administration. Nevertheless, I believe the supplemental provides the necessary dire emergency supplemental funds for Desert Shield/Desert Storm, including the assistance needed to dismantle Soviet nuclear weapons, and for emergency disaster relief for our citizens who have been hit hard by natural disaster.

Mr. HATFIELD. Mr. President, I would like to take this opportunity to raise an important matter with the distinguished Senator from West Virginia, who is the chairman of both the full Appropriations Committee and the Interior and Related Agencies Appropriations Subcommittee. As the chairman knows, my colleagues from the Pacific Northwest and I are in the midst of dealing with the application of the Endangered Species Act in the cases of the northern spotted owl and Columbia River Basin salmon. These listings are the cause of tremendous concern to the political leadership and residents of the Pacific Northwest, and we are struggling to resolve equitably many contentious issues associated with these listing decisions.

The implementation of the Endangered Species Act in the cases of the spotted owl and the Columbia Basin salmon has raised several legitimate questions which need to be pursued. Speaker FOLEY and I believe that an objective scientific study of various aspects of the Endangered Species Act, including the definition of species, conflicts between species, the role of habitat conservation, recovery planning, risk, and issues of timing, should be

undertaken as a way to begin resolving these difficult issues. Accordingly, the Speaker and I, together with Congressman GERRY STUDDS, chairman of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, have requested that the National Research Council initiate a review of the Act.

Because the U.S. Fish and Wildlife Service is the lead agency in implementing the Endangered Species Act, I feel that it is most appropriate for this review to be funded from the Fish and Wildlife Service budget. Would the distinguished chairman agree that funding for the review come from the Fish and Wildlife Service's fiscal year 1992 appropriation, and that we should pursue this course of action?

Mr. BYRD. I would say to the Senator from Oregon that I understand many of the problems that he and his colleagues from the Pacific Northwest face with regard to the implementation of the Endangered Species Act, and believe that the Fish and Wildlife Service should cooperate to the greatest extent possible to fund this valuable review of the act.

Mr. HATFIELD. I thank the distinguished chairman.

Mr. President, the conference agreement on House Joint Resolution 157 that we bring to the Senate today is a great improvement over the measure we took to conference. It has been trimmed substantially, relieved of the burden of numerous provisions that would have prompted a veto from the President.

The resolution provides funding for additional costs of Operation Desert Shield/Desert Storm, agriculture disaster relief, and the disaster relief programs of the Federal Emergency Management Agency. The budget summit agreement exempts the Desert Shield/Desert Storm funding is exempted from the discretionary spending caps of that agreement. Funds for agriculture disaster and FEMA programs are will also be exempted as they are declared emergencies by Congress and the President. A portion of the funds provided for those programs will be available now and the remainder upon a subsequent determination by the President and the Congress that an emergency requirement exists.

I should emphasize, Mr. President, that section 202 of the Senate-passed resolution, pertaining to selective Presidential approval of the amounts provided, has been dropped.

The bill also contains a variety of legislative provisions adopted by the Senate in its consideration of the measure or brought to the conference for its consideration. Notable among these is the provision allowing up to $500 million in aid to the Soviet Union, pursuant to the Nunn-Lugar and Boren amendments to the CFE treaty implementing legislation.

Mr. President, I believe this conference agreement represents a satisfactory conclusion to a long process, and I urge its passage.

EXTENSION OF CERTAIN FERC LICENSING DEADLINES

Mr. BUMPERS. Mr. President, I would like to enter into a colloquy with the chairman of the Appropriations Subcommittee on Energy and Water Development.

When the Senate passed the fiscal year 1992 dire emergency supplemental bill, an amendment was adopted regarding an extension of certain FERC license deadlines for hydro power projects which have or are soon to expire. That amendment, which was identical to S. 1283 as passed by the Senate, was dropped during conference consideration of the bill.

I am aware that the appropriate House committee plans to take action on these proposed extensions en bloc in the near future. I seek clarification from the chairman that the conferees action to delete the amendment was in deference to the House authorization committee and in no way reflects on the merits of the proposed extensions.

Mr. JOHNSTON. That is correct.

Mr. BUMPERS. I thank the Chairman.

Mr. COCHRAN. Mr. President, we have before us the conference report on House Joint Resolution 157, a joint resolution making dire emergency supplemental appropriations for fiscal year 1992. This agreement was reached earlier today.

This conference agreement includes $1,750,000,000 for disaster payments to farmers to compensate them for losses suffered from natural disasters during crop years 1990, 1991, and 1992. More specifically, this agreement provides $955 million for disaster payments authorized by the 1990 farm bill for crop year 1990 and provides funding for crop year 1991 under the same terms and conditions. Payments are made available for losses which occurred in either 1990 or 1991, at the producer's option. Also, the conference agreement provides an additional $755 million for crop years 1990, 1991, and 1992 under the same terms and conditions, and these funds will become available when the Congress receives an official budget request.

Mr. President, there have been very serious weather problems throughout the country during the past 2 years. In Mississippi alone, it is estimated that in 1990 farmers lost $100 million. While some areas of my State escaped the effects of the terrible floods last spring and were able to achieve normal to above-normal crop yields, other have experienced significant losses in 1991.

As you know, Mr. President, I have been working on this critical issue for over a year. In fact, on July 10, 1991, I introduced a bill to provide assistance to those farmers hard hit by natural disasters in 1990 and 1991. This legislation was cosponsored by over 30 Senators. Also, we worked with the Secretary of Agriculture and other administration officials to try to identify things that could be done to address and respond to these problems. And, I must say they worked very hard to help us meet these needs.

Mr. President, I am pleased that the conference agreement before the Senate today provides the assistance that is long overdue and so desperately needed by our farmers. I urge my colleagues to support this supplemental appropriations conference report.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. DOLE. If the majority leader will yield, I am wondering about the scheduling for the balance of the day. It is my understanding the next item of business would be the surface transportation conference report followed by, I guess, banking, RTC, Medicaid, and the crime bill.

Mr. MITCHELL. The Senator is correct. I have discussed with him previously this morning briefly by telephone our schedule for the remainder of the day. It is my hope to personally discuss all of these matters in some further detail.

I want to thank the Senator from Oregon for his cooperation in permitting us to proceed on this important legislation.

Mr. President, I thank all of my colleagues for their cooperation. I look forward to a productive day today on the various matters we have. The surface transportation bill will be the next order of business, as soon as we can proceed to it, which I expect to be shortly.

Mr. President, I yield the floor.

Mr. BRYAN. Mr. President, during the course of the debate on the conference report as well as the earlier processing of this legislation as it emerged from this body in the first instance, the distinguished and able senior Senator from New York has characterized this legislation as a historical watershed in terms of the changes which we made in the Highway Program in this country. I think that characterization is apt. He has placed, in my view, in proper perspective where we have been with this program and where we intend to go in the future. I commend him and others for the leadership which they have shown in

making this legislation possible for us to act upon today.

Let me suggest, also, Mr. President, that this is a historical occasion in another sense. The title II provisions, of which little has been said, deal with highway safety. The conference report that is before this body represents the most significant improvements in highway safety in easily more than a decade. I would like to cite just two examples, if I may.

This legislation will require, by September 1996, mandatory installation of airbags on 95 percent of all the new cars sold in America, not only on the driver's side but on the front seat passenger side, and by the following year, September of 1997, 100 percent of all vehicles, automobiles sold in America will have airbags on the driver's side and on the passenger side on the right in the front.

We all know that America's changing driving patterns indicate today that more people choose minivans and light trucks as a principal means of transportation, supplanting to some extent their heretofore expressed preference for automobiles, so for millions of Americans light trucks and minivans are family vehicles.

This legislation also requests that by September 1997, 80 percent of such vehicles—light trucks and minivans—will have airbags on the driver's side and on the passenger side on the right, and by the following year, September 1988, 100 percent of all such new vehicles sold in this country will have airbags on both the driver's side and the passenger side on the right in the front.

That has not been an easy achievement. The technology for airbags was first patented back in the 1950's, perfected for introduction in the 1960's, and, indeed, in the 1970's limited introduction had begun. There was strong industry opposition. Earlier Departments of Transportation had promulgated rules to require the installation of such airbags. That did not come about for a number of reasons. But today that will become a reality if this conference report is adopted.

I might say that what it means for motorists who travel along the highways in this country is each year we will save 9,000 lives, and 155,000 injuries can be avoided as a result of the mandatory installation of such airbags.

As is true with every significant undertaking, these things do not come about without the support of a number of people. I would like to mention some of them. First, I would like to express my appreciation to the chairman of the Senate Commerce Committee, the distinguished Senator from South Carolina [Mr. HOLLINGS] whose unswerving support both during the committee development of this piece of legislation and as it moved on the floor and as it emerged from conference has made this possible.

I would also like to acknowledge the support of the ranking member of the subcommittee, the distinguished junior Senator from the State of Washington, SLADE GORTON, a long-time personal friend of mine, whose skillful work at all stages of the proceeding and particularly his efforts at the conference level also have been invaluable. Without them, we would not have been able to achieve the incorporation of this provision in the conference report.

I would note, also, the efforts of Senator DANFORTH, who for many years has been a great crusader and advocate for highway safety and whose support of airbag legislation over the years paved the way for the legislation we are about to enact.

Senator EXON served as an important member of the conference committee as well, and I note his efforts and his support, and note that of several of my colleagues who served with me on the Senate Commerce Committee, who are also cosponsors, Senator KERRY, of Massachusetts; Senator MCCAIN, of Arizona, as well.

In addition, Mr. President, this legislation provides for the reauthorization of the National Highway Traffic Safety Administration. Not since 1982 has the reauthorization been approved by the Congress, notwithstanding the fact that on three prior occasions the Senate has approved such reauthorization.

This legislation includes such a reauthorization. And in so doing I note that it provides for a number of safety rules, rulemaking procedures, which will also enhance the safety of Americans traveling on our highway system.

This legislation mandates the final rule improving protection against head injury, and it provides that a series of rulemakings on other safety issues must commence. Included among those are improved rollover protection for cars, minivans, light trucks and jeeps; improved side protection for minivans, light trucks, and jeeps; antilock brakes; improved seat-belt design, particularly as it relates to children; and safety of child booster seats.

The responsibility of the National Highway Traffic Safety Administration can be simply stated. Its purpose is to save lives.

I believe that the title II provisions contained in this legislation and in this conference report that I hope the Senate will adopt today moves us a long way down the road in achieving that ultimate stated goal of improving highway safety in America and to protect those who drive along our highways from serious injury or death by improved design and by improved safety standards.

I thank the Chair. I yield the floor.

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

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

RESPECT AND THANKS TO THE STAFF

Mr. SYMMS. Mr. President, we have heard many praises from many of our colleagues in the Senate for the work on this bill. But I personally, Mr. President, would like to pay my respect and thanks to the staff of the House and Senate, Republicans and Democrats, on this bill. These young people have worked long and hard and many, many hours.

I personally for my own staff am indebted to Taylor Bowlden, my legislative director, who also has specialized in transportation matters as a member of my staff in these past years; Angela Plott, his able assistant for this work on the highway side of this.

I also would like to pay thanks to the now State Director of the ASCS, Trent Clark, who worked with me in the formation of the National Trails Act which is a part of this conference report. I particularly appreciate him, and then his replacement, Tom LeClaire, Sue Fagan, and Mike Stinson, who worked on the National Trails Act.

Mr. President, we have a list of many very fine staffers in our committee, and I know at some point we want to list all of their names but Steve Shimberg heads up the Republican side, and David Strauss the Democrat side.

I ask unanimous consent that—if it does not get mentioned here as the day goes—those names be listed, all the people on our committee staff and personal staff that made it possible. We all owe them a debt of gratitude.

We on the conference think we work hard. But they have worked endlessly, nights with 1 or 2 hours sleep, for the last 2 weekends the conference met. Everytime, when the conference would finally break up at midnight, we would direct the staff to have more numbers prepared for us the next morning. This has gone on and on. These people have done a terrific job. I personally appreciate it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. 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. MOYNIHAN addressed the Chair.

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

Mr. MOYNIHAN. Mr. President, in the generous and altogether appropriate manner of my colleague, Senator SYMMS, cochairman of this legislation, I would like to acknowledge the

exceptional work that the staff of the Committee on Environment and Public Works and the individual Senate, conferees, have done on this legislation. We hear oftentimes about the staff and how many there are. And yet, perhaps we do not fully appreciate, or the public does not fully appreciate, what extraordinary jobs they do. And how few there are of them, in fact, when you see them up against a Federal Government staff. These few hundred men and women have as much to do with actually writing our laws as any of us here who vote on them.

Let me, Mr. President, go back to my desk for 1 minute and get you a copy of this bill.

(Mr. SHELBY assumed the chair.)

Mr. MOYNIHAN. Mr. President, here is the bill. It is a feat of draftmanship, as well as legislative creativity. It will be one of the great statutes in the two-century history of Congress and transportation.

The bill would not be here this hour without the extraordinary efforts of Roy Kienitz, who is the lead staff member for the Committee on Environment and Public Works; Rob Connor, of whom it can be said this bill would not be here without him because of the critical moment this morning when the House of Representatives was about to act on the bill; the House discovered it did not have a copy. In the fastest 500 yard dash on record, Rob Connor made his way to the Dirksen Building and got it back to the well of the House of Representatives. Tim Bernstein, Mark Kadesh, Andrew Samet, and Dr. Jay Messer of my office have done wonders. David Strauss, the director of the staff of the committee, has been an unfailing asset, as has Mike Weiss, who worked himself to the point of exhaustion, something no one would ever dream possible in a man of his energies. Jean Lauver, Steve Shimberg, of Senator CHAFEE's staff were invaluable resources in environmental matter. So too were Kathy Ruffalo, George Schoenes, and John Grzebien of the committee staff, Taylor Bowlden and Angela Plott of my cochairman, Senator SYMMS' staff and were outstanding. Grace Reef of Senator MITCHELL's office was everything one can hope for in an ideal staff member. Grace interrupted the most personal possible plans of her own life to be available to this Senate for these purposes. Jeff Morales, John Ferry, George Cartagena, Ann Loomis, Sue Pihlstrom, they were incomparable. If the Nation is to be grateful for this legislation, it should be grateful to these men and women. Thank you.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

SURFACE TRANSPORTATION ACT—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 2950 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 amendment of the Senate to the bill (H.R. 2950) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, and for other purposes, having met, after full and free conference, have agreed to recommend and to recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, 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 26, 1991.)

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report.

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

The Senator from Indiana.

Mr. COATS. Mr. President, as we are winding down here, perhaps one of the most far reaching and comprehensive highway bills that has ever been presented to the Congress is before us. There are many good things in this legislation. I commend those who have worked long and hard in crafting changes in the highway bill that are important to this Nation as we move into a new phase of highway construction and highway administration.

The battles have been long and hard. There have been victories and losses. There have been gains and pluses and minuses and, for the most part, some substantial improvements.

It is interesting to me, however, though, that in the end there still are inequities that exist and, for this Senator representing the State of Indiana, I find that those inequities in terms of how the State of Indiana is treated under this bill outweigh the good that will flow to our State as a result of this bill.

On May 29, 1956, the Senate debate over creating a national highway system was nearing an end. A large map was at the back of this Chamber marked with red lines representing over 40,000 miles of proposed new concrete and pavement in this country.

It was some of the largest spending programs in the history of the United States. I might add it has been one of the most successful infrastructure programs in the history of the United States. It was a creation of legacy to our former President Dwight Eisenhower.

Many in this Congress who preceded me fought very hard and had the foresight to go forward with then what was considered an extraordinarily ambitious plan. It has united our Nation. It has provided the means for commerce to flow between our States. It has been enormously successful.

During that debate, however, on May 29, 1956, debate, as often happens in this Chamber, turned heated, partly due to the persistent comments and questions and remarks of Senator Homer Capehart, then the senior Senator from Indiana. Over a 2-day period of time, again and again he raised his impressive girth to object, cajole, argue, and badger his colleagues.

As the vote neared, tempers began to fray and Senator Kerr of Oklahoma asked Senator Capehart what his real opinion of the bill was. "I will tell the Senator from Oklahoma what I think about the bill," Capehart replied. "I think it is an awful lot of pork barrel. I believe that the real purpose behind the formula in the bill is to provide certain States with some pork barrel money. That is what I have to say, if anybody wants my opinion of it."

Well, Hoosiers have, over the years since 1956, contributed significantly to Federal transportation bills. Invariably we have sent more money out of the State than we have received back. We have been known as what has come to be known here as a donor State, a polite way of saying that we have contributed more than our equitable share of money into the trust fund to build other people's roads.

Some of this made a great deal of sense. States like Montana, small in population, vast in area, could in no way afford to build their own roads. There is just too much ground to cover and too few citizens to tax. If we wanted a national highway system, these States would require help in the form of subsidies from other higher populated States. And America did want a national highway system, both for economic growth and to move supplies and troops for national defense. The road system approved by Congress in 1956 was actually called the National System of Interstate and Defense Highways.

But that was then. Today is today. Today we have completed 98.9 percent of the interstate highway systems, 42,795 miles, and that is a lot of miles open to traffic. The need to subsidize construction in the empty West has virtually ended. Yet we still find within this bill a new 6-year bill facing us, the use of Indiana highways and Indiana funds to continue to subsidize whose need for the most part has passed.

The use of Indiana highways is expected to increase 50 percent by the year 2000 and on June 19 of this year the Senate signaled that a new era of transportation policy may be beginning.

Today's most pressing problems are not really constructing new highways, but making the old ones fit for use. The Department of Transportation estimates that 40 percent of the pavement on Federal highways is in fair or poor condition. In Indiana we have our share of roads that need repair, but less than our share of resources to do that. The use of our highways has increased by 38 percent just since 1980.

Last year Indiana still received just 79 cents for every highway dollar we sent to Washington.

Between 1986 and 1990 alone over $389 million in Federal highway user fees collected in Indiana were sent to other States.

A transportation bill is very important to the economy, particularly at this time. But in our rush to reauthorize a program, it is important that we do not overlook a basic question of fairness.

This bill is about how Federal moneys are allocated to the States. As a representative of a State that has donated money to finance highway construction in other States for 40 years, I have to ask the question that Hoosiers are asking: Is this fair for Indiana?

The Nation's highway system, as I said, is virtually complete and yet the State of Indiana is asked to continue to bear the burden to finance road projects in other States. Under this bill Hoosiers will be 44th in the Nation in return of Federal dollars. That simply is not good enough, not for a State which for decades has contributed more than its share, without much complaint, to build a national system.

We have roads of our own which we want to build and repair. We want to build the Evansville, IN, highway which may cost up to $1 billion, the last link of our State between major metropolitan areas—Evansville being one of our largest cities—and lies incomplete because the decision was made to terminate or to scale back the amount of originally planned interstate. Evansville was to become the link to Indianapolis, Indianapolis north to Detroit and Canada, south to Memphis, completing a very important segment of the interstate highway system.

For some reason, the reasons that I do not fully understand, the decisions that were made before I became a part of this body, that decision to complete that link down from Indianapolis from Evansville and on to Memphis was canceled.

So now we find residents throughout southwest Indiana following a tortuous route to connect with the center hub of our transportation system and economic system in the State of Indiana.

One-quarter segment of the southwest corner of our State cannot develop fully economically without sound transportation access, and yet this has been denied to people of Evansville.

This bill contains some funding, roughly $30 some million, as Federal contribution over the next 6 years, and we are grateful for that. But this cannot begin to pay the cost and, in fact, will represent just a little over 3 percent of the total cost of completing that highway. Our State cannot afford to come up with the additional 97 percent.

We have other projects in the State, and I am grateful that funding for those projects is included in this bill. Lafayette railroad relocation, widening of Highway 67 to Muncie, the Hoosier heartland highway, Columbus interchange, are all important projects, and we are grateful that funds for those projects have been included here. We worked long and hard, and I thank my colleagues for being responsive to my efforts to include them.

Yet, we find that Indiana, which has a very small share of the demonstration project money, pales in comparison to a number of States, a handful, which receive an exorbitant, almost unbelievable share of demonstration projects, many of those States having long ago completed their interstate system.

Mr. President, it is difficult to support a bill which institutionalizes our State's second-class status in terms of receiving money back from what we pay into the highway trust fund. While this bill does show improvement, we will be well into the next century before Hoosiers start to receive an amount equal to what they are putting into the total fund.

I supported the Senate bill when it came through because of amendments added by Senator BYRD and Senator BENTSEN which brought some form of equity, particularly in terms of future dollars to our State. We operated on the principle not that we should receive more than our fair share, but that we should receive exactly what our fair share is. Hoosiers who had paid for decades into a fund which had not returned money equal to what we paid in felt like they had every right to ask that we at least get a dollar back for a dollar in. The Senate bill moved us substantially toward that goal. I was disappointed, therefore, when this conference report came back which now moves us back away from that goal. And, in fact, both the Senate bill and the House bill provided Indiana great equity than the conference report provides.

Indiana will be 44th in the rate of return of the dollar out of 50 States. We pay 2.5 percent of the Nation's highway bills; we receive back only 2.18 percent of its money. When you add mass transit, which Indiana receives only 35 cents on the dollar, Indiana receives only 1.9 percent of the highway pot, or 73 cents on the dollar.

At the current rate of growth for Indiana's rate of return, we will be a donor State until the year 2015, and that is just not fair. For 58 years we have been paying for highways in other States; $389 million just in the period 1986 to 1990; $389 million in Federal highway user fees collected in Indiana were spent in other States.

Ten States came out worse in the conference report in either the House or Senate bill. Indiana is one of them. Six States alone account for 50 percent of the $6.4 billion in demonstration or special projects funding.

President Reagan vetoed the last highway bill because of $1 billion in pork. This bill contains $6.4 billion. The bill also contains an extension of the 2.5 cent gas tax increase enacted in last year's budget compromise, despite the fact that the Senate overwhelmingly rejected the notion of a tax increase and supported a resolution which I offered putting the Senate clearly on record as opposing a gas tax increase for the purpose of funding this bill.

We all know the trust fund contains dollars that have not been spent in past years, dollars that were collected for the sole purpose of building highways and bridges and providing transportation means for Americans who willingly went to the pump, filled their cars with gas, and sent money to the highway trust fund under the belief that the money would just simply go and be returned back to the States for the building of highways and bridges and roads and transportation projects.

Yet, that money has not been fully returned to the citizens to pay for that specific purpose. And now we find that in order to fund this bill, we have to extend a gas tax increase in the amount of 2½ cents per gallon in future years. So in addition to not providing equity for citizens of Indiana, it requires that they continue to fund other States by increasing a tax that they pay at the pump. That simply is not acceptable to me, nor is it acceptable to the people that I represent.

The rate of return is being billed as better than it actually is. The conferees are saying that Indiana is receiving 94 cents on the dollar. But this is only applied to future contributions. With the spend-down from the trust fund, which includes significant contributions from Indiana calculated in the mix, we end up with a rate of return of roughly 84 cents on the dollar.

The bill is also $2.5 billion over budget. And I have not been able to secure an adequate answer from anyone as to where these funds will come from. What I am concerned about is that the numbers presented on the charts that have been given to us will not be translated into statutory language, and as a consequence of that, those categories which were used to help bring more equity to the donor States will be those categories which will be assessed to meet the budget goals.

And if we have to take $2.5 billion out of those categories, then we will lose even further.

Mr. President, I received a letter from the Governor of the State of Indiana.

Mr. SYMMS. Will my colleague yield?

Mr. COATS. I am happy to yield.

Mr. SYMMS. Mr. President, the junior Senator from Indiana has certainly been involved in this whole process in letting us on the committee and in conference know that he wanted a better share for Indiana. I believe we have done better for Indiana than any highway bill in the past that has gone through here. So I think the Senator has certainly represented his State very ably, and I compliment him for that.

He did make a comment, and I think we should answer that question, because it is a good question and it is a fair question. And that is, if the $114 billion in total in the bill is over what may come in in the trust fund on the calculations, the Byrd amendment that is part of the highway legislation—that is, the Byrd of Virginia, not West Virginia, amendment—states that we cannot overstate the trust fund.

This bill is trying to spend the trust fund down at the end of 6 years. The best we can estimate, it will spend it down. If you come to a point where it runs at cross-purposes with the Byrd amendment, automatically there will be a reduction across the board.

But Indiana or Washington State or Arizona, Missouri, or Idaho, no State will lose their share disproportionately. Everyone will get a reduction to see that we stay in balance. Now, what has happened in the past is that, as the country grows, if the economy is good and people are driving a lot, that will not happen at the 6th year, and there will be adequate revenues to fund it fully at this level.

But if it does not work out that way, for the State of Indiana, the answer is that it will be an across-the-board reduction, treating all people evenly. That is the answer.

That is a good question. The Senator asked me that yesterday. I have been checking to get the answer.

I thank the Senator for his interest and efforts.

Mr. McCAIN. Will the Senator yield?

Mr. COATS. I will be happy to yield to my colleague from Arizona, but let me first respond to the Senator from Idaho.

The Senator from Idaho and I discussed late into the night this question, and I very much appreciate the Senator getting that information and responding back to me.

It is sort of like good news and bad news. The good news is that we hope to be able to have enough money in the trust fund so that we do not have to make this reduction. But the bad news is that it is based on an assumption, an economic assumption, that may or may not come true.

I think those that are basing support for this bill, or making decisions about how much their States are going to get, need to understand that is not necessarily guaranteed in that full amount listed on the bill, because it is based on an economic assumption. Under the law, we are required to reduce that back under the Byrd amendment, reduce that back to a lower level, roughly $3 billion lower.

I am pleased to hear that if that happens, it comes out on an across-the-board basis. Obviously, I am distressed to hear that it might have to happen, because that then would further jeopardize the amount of funds coming to us. I was concerned that it might come out of specific categories, or that the language might specifically designate or target particular categories, and that those categories would have been the ones used to compensate donor States for the inequity.

I also want to again thank the Senator from Idaho for his willingness to work with me. He has been very patient, sometimes when I have been very impatient, to try to understand my concerns and to work with those.

And I am grateful and Hoosiers are grateful for the increases that do exist within this legislation. Indiana does do better, and we are appreciative of that. We will, over the next 6 years, receive about $2.5 billion. That is substantially higher than the $1.4 billion that we received over the last 5 years. But in proportion to what we pay in, and in relation to other States, we still find ourselves in the donor category and pretty far down the list, and that, we feel, is inequitable, given the fact that the national Interstate Highway System has been virtually completed.

Mr. SYMMS. I want to say again that, because of the efforts of my colleague from Indiana and the Senator from Missouri and both Senators from Florida, there has been a rising awareness of the donor-donee problem in this Congress. Not that it was not here. It started with the Bentsen amendment to move it to 85 percent. We have diligently worked in conference, both House and Senate Members, to make it very clear that all States will get a fairer return than they were getting before in those donor States. I believe in almost every instance the record will show and it will work out that those States like Indiana, like Missouri, like Florida, are going to do substantially better in this bill than they have in previous bills.

Mr. COATS. That is a true statement. We will do better. And I suppose beggers cannot be choosers, particularly when you do not have enough votes to change the formula. We are grateful for what we did get. But we still feel we need to make the point that the equity is not there and we are still struggling to bring ourselves to parity.

If Indiana or Florida or Missouri were asking to be put into a category of getting back more than they put in, then I think a valid argument might lie in terms of what are you guys trying to do? But that is not the case.

All we are asking for is parity. All we are asking for is equity. And having contributed, for decades, hundreds of millions if not billions of dollars more than we received back, understanding that the Interstate Highway System needed to be completed in the West and that those States could not generate enough funds to complete it and they needed support from other States, now that it is completed, all we are asking for is a dollar for a dollar. Having done more than our fair share in the past, we are asking for our fair share for the future.

We have taken steps forward in terms of addressing that problem. We have not, in this Senator's opinion, adequately addressed that problem to bring us to a position of equity.

I was going to yield to my colleague from Arizona who stepped off the floor for a moment. I will be happy to do that. I am winding up my remarks here. I know others are interested in speaking.

Let me just finish by saying that, one, we are pleased that, through a lot of hard work and negotiations and a lot of support from my colleagues, we were able to improve on the original versions which came from the conference committee. We have taken a step forward. We will receive an increase in highway funds over the next 6 years. Our rate of return does increase, and it is moving toward a historic high. It is higher than it was in the sixties and the seventies, substantially higher. But it also is not totally equitable.

We do have funds, albeit some of them limited, for a handful of projects, specific projects, those that I have been working on and others have been working on diligently. And we are pleased that that project funding is part of this bill. This will provide jobs for Hoosiers. This will improve the infrastructure in our State and help stimulate our State's economy. And it is important for all of that.

But there are some basic principles which have not been met, principles of equity, principles of whether we are going to add additional taxes to Hoosiers and Americans as they pull up to the pump, principles of providing equity throughout the bill, regardless of how funds are distributed, whether they are through demonstration projects or formula funding or whatever.

Mr. President, I received a letter late last night from our Governor, who has indicated that, while he is grateful for the work that has been accomplished here, Indiana still does not receive its fair share of funds under the compromise proposal, that this principle of

equity is very, very important to Hoosiers, and for that reason he urges us not to support the bill. He comes to the same conclusions that I do.

Mr. President, I again thank my colleagues for their support, for listening to my arguments often late at night, who have been responsive in some measure to address some of those concerns. I appreciate the obstacles they were up against and the difficulties of addressing what I felt were serious inequities in the bill. They did take steps forward. They were responsive. I appreciate that. But I, in good conscience, cannot support a bill which does not provide a better sense of equity to the people that I represent.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I listened very intently to the interesting remarks of my friend and colleague from the State of Indiana. I sought recognition about the same time as the Senator from Indiana. I think he beat me, and the Chair properly recognized him first. I thank the Chair for the recognition I have just been given.

I believe the Senator from Indiana brought forth, for the first time in these lengthy discussions, a matter that I wish to address and will be addressing in my remarks, and that is the tax increase that are embodied in this bill that have been overlooked, basically, in the discussion up until this point. They have been totally ignored in the press, when the opposite is usually true when we talk about tax increases.

I realize that the steamroller is coming down the hill and will not be stopped by the conference committee proposal and, therefore, the agreement to H.R. 2950, the surface transportation reauthorization bill. But before it rolls over us, unless the President has the courage to veto—and I hope he will for lots of good reasons, and I do not know why he has not been saying more about the possibility of vetoing this bill which is veto bait if there ever was—I want to register my opposition to the measure. We were told that the funding formulas involved herein treated all States fairly as compared with the Senate-passed numbers in the Senate bill that was passed way last spring. That turned out to be not the case, at least with regard to my State of Nebraska.

We were told, also, Mr. President, that we had to accept this agreement coming out of the conference because this was the final offer from the House of Representatives. If we did not accept this, they would go on home and we would not have a bill of this nature that, obviously, is very, very necessary.

I am, frankly, a little weary of final offers that are basically caved into by the Senate from the House of Representatives. I still maintain we are supposed to be coequal branches and we have a right to stand up in conference for positions as previously passed in the Senate when we go into conference with the House.

I do not like to rain on the picnic parade of self-indulgence and the mutual admiration society that has been going on here, but I must. I just want to say that mutual admiration society is not universal. Yes, a lot of hard work has been done, and I know it has not been easy. So the fact that people worked hard on Saturdays and Sundays and sometimes almost all night has to be recognized. And we thank those who took part in those deliberations. At least we now have a bill, regardless of its fairness.

Yet the best-kept secret is that "T" word that is in this bill. It has always been an action word before whenever we raised taxes. But I must say that the fact that this measure increases taxes is something that has been basically overlooked. And, if for no other reason, that is why, in my view, the President of the United States should veto the measure.

The original Senate bill last June was a good bill. But something happened on the way to and from the conference. It passed the Senate with no tax increase and no earmarked, porkbarrel projects. It returned after the conference loaded with billions of porkbarrel specials in the form of House pet projects, according to the figures that we received late yesterday.

In that regard I might say that those of us who were to find out what was going on inside that room for the most part were not told what was going on in that room.

The State of Pennsylvania, for example, alone has $935 million in pork, more than the total allocation to Nebraska. That is just one example. The basis for my opposition is the part of the bill which allocates transportation funds to the States. The funding distribution in the conference agreement is fatally flawed. The funding formulas have been bent to fund pet projects rather than a State's transportation needs and financial ability to pay for those needs.

I should first note, Mr. President, that there are some good items in the other parts of this bill, including some provisions that I sponsored. I served as a Senate conferee for the Senate Commerce Committee on completely unrelated portions of the bill dealing with interstate matters and safety. Interstate transportation regulatory matters in the bill are good. That part of the bill has a number of desirable items, such as strength in Federal truck safety efforts; a new Federal truck limit to keep trucks from getting longer and heavier, those that travel on our interstate highways at least; major improvements in cutting paperwork burdens for the truckers who do interstate business and the exclusion for custom harvesters from the commercial driver's license requirement.

For our Nation's transport future, the bill includes the Hollings-Exon maglev and high-speed rail provisions, along with Senator MOYNIHAN'S maglev provisions in a future-looking package to jump-start our Nation's efforts in this very important technology that for too long have been ignored.

All of those items I just mentioned on which I worked as a part of the conference separate and apart from the highway formula funding, but the funding distribution is the central core of the overall bill.

Mr. President, to say I am disappointed in the outcome of the House-Senate conference is an understatement. Under the original Senate-passed bill, Nebraska received 30 percent more than in the House bill, or an average of $200 million per year for 5 years, compared to the House passed average of $153 million per year for 6 years.

While I prefer the Senate numbers, I know that the conference committees must reach compromise solutions. I had hoped for at least some middle ground for my State. Unfortunately, the conference agreement allocates to Nebraska less—less, Mr. President—than under either the House or Senate authorization bill or $912.5 million over 6 years, according to figures that have been provided us at a very late date, yesterday afternoon.

In my view, getting less funds for Nebraska in either the Senate or the House version is no compromise. The arbitrary funding distribution formula to the States is long; it is the guts of the bill.

The funding distribution is a sufficient reason alone and by itself for Presidential veto. But in addition, this bill also raises the gas tax. Yes, it provides for a gas tax increase.

I realize that proponents say that this is simply an extension of the 1990 gas tax increase. However, as one who has voted against the 1990 nickel gas tax hike, I know that if this conference report becomes law, which it will, unless the President vetoes it, it amounts to an additional $100 million in higher taxes for Nebraskans. To me, that sure sounds like a tax increase.

Read my lips, the President should veto this bill if for no other reason that it again violates his famous "no tax increase" pledge. It should be vetoed and the Congress be recalled immediately to do it right by eliminating all of the House pork which clearly necessitated the tax increase that nobody wants to talk about.

Again, the original Senate bill correctly took the approach of leaving decisions on individual projects to State officials and highway planners. Unfor-

tunately, the conference agreement follows the House-passed bill approach of Congress knows best.

According to figures of late yesterday made available to me, the conference agreement includes a record number of special porkbarrel earmark projects. I suspect it is no coincidence—I emphasize, Mr. President, I suspect it is no coincidence—that highly placed House conferees from Pennsylvania and Arkansas and New Jersey and California led in accumulating the largest percentage of such special projects.

Mr. President, unfortunately, my early fears about the direction of announced tax increase demands and pork projects in the House bill would lead to an unfortunate conference agreement, and here it is right now on the floor of the Senate.

I suggest, Mr. President, that this bill will, without question, provide disproportionate amounts of funds in the bill being diverted to porkbarrel projects in certain States of House Public Works Committee conferees, and Nebraska would be the loser in that process. Unfortunately, that is exactly what happened.

Nebraska already has one of the highest gas tax rates in the Nation and is clearly up against the wall in using its own fiscal resources along the lines, I might say, as outlined by the Senator from Indiana in his remarks preceding mine.

Mr. President, I wish to be recorded as no, a very definite no, on the highway funding conference agreement that is before the Senate.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I suppose it comes as no surprise to my colleagues when I say that highways are vitally important to my State of Missouri. They are really the life's blood to our State. They are extremely important for our people, for their jobs and for our economy. It is for that reason that I, along with my colleagues from Florida and Indiana and Texas and Michigan have been so adamant about trying to get a fair share and a fair shake for our State.

I should begin by offering my apologies to colleagues whom I may have offended, whom I have imposed upon, but I did so because this is a critical economic program for our State. Without good highways, we cannot develop jobs, we will not see our State grow. In addition, we risk the lives of our citizens each day of the year that they travel on overcrowded highways, inadequate roads and unsafe bridges.

But under this bill, though clearly it is not what I would have drafted or I would have preferred, we have taken a major step forward, and for that I thank my distinguished colleague from Idaho, Senator SYMMS, my colleague from Rhode Island, Senator CHAFEE, our brother in the donor State category, Senator WARNER from Virginia and, most of all, the distinguished chairman of the committee, Senator MOYNIHAN. They have listened to us, they have been gracious in putting up with our continued demands and requests, and I want to express now my sincere appreciation to them.

When we began this exercise, there were a number of things we thought critical to be included in a new highway bill.

First of all, many of the donor States said it is time for a fair shake; we want a fair funding formula; we want a basis for allocating highway funds on a factual, responsible basis.

Second, we wanted to continue the National Highway System.

Third, we thought it was time we began to spend down the highway trust fund which has been used for too many years to mask the growing Federal budget deficit.

And, fourth, we wanted flexibility for States that have different needs.

I initially criticized, in this Chamber, some of the provisions in the bill which were designed to favor alternatives or nonhighway solutions to transportation problems. In some of the States, those are very important. In our State, the need for highways and roads and bridges is so great we cannot afford to do those extra things, to add those frills that would be nice.

To say that there are some things in this vital bill that are deeply disturbing, I guess, would be an understatement. I do believe we have made some strides forward, however. We have kept the National Highway System. We have agreed to spend down the highway trust fund. We did achieve some flexibility for the States so they can put the dollars where they are needed to meet the highway, road and bridge requirements in each State, and each State is different.

But there is no new formula. A formula was adopted in the House, but unfortunately the conferees gave up on that far too soon. I would hope that over the next few years, before we debate a highway bill again, we can come to some agreement that there is a better way than making a grab bag out of highway funds; that we can allocate those dollars so they will go where they are needed.

Mr. President, in my view, the need now is based on usage. For the donor States, I could say we gave at the office. We gave significantly so we could complete a National Interstate Highway System, the highways of defense. We understand that States with lower populations needed those extra dollars so they could be hooked up to a national system, but now that system is complete. I frankly think it should be declared complete and we ought to go about taking care of the needs of those States where the interstates are so crowded people cannot travel at a reasonable speed in a reasonable time, those States where bridges on four-lane highways have to be narrowed down to one lane each way because they are so inadequate. That formula did not survive.

I hope, as we discuss highway bills in the future, we will have some leadership from the Department of Transportation, we will have some leadership in Congress to show that there is a better way. Highways should not be just a political grab bag. We need to begin to allocate those dollars where they are needed. The bad news is that there is really no formula coming out of this bill. There have had to be ad hoc adjustments and the entire funding process seems to be a series of ad hoc adjustments.

The charts are truly interesting. Some anthropologist 1,000 years from now will look at those charts and say, is this the way the greatest country in the world allocated its transportation funds—according to 8, 10 columns? Certainly, there is nothing to look back on the next time we do a highway bill and say we had a great formula back in 1991; we managed to piece and patch and put it together.

I am no fan of demonstration projects, as my colleague just noted. There are some real questions about them. Demonstration projects make good reading back home. They do allocate some dollars and they do say what the Members of the legislative body think is important, but they are no substitute for good roads, good highways. Those come about by reason of the State departments of highway transportation determining where the needs are.

Prior demonstration projects in my State caused funds that have been designated for a project, but held up by environmental requirements or other legal technicalities, not to be spent. Clearly, that is not a good way to build highways.

But because the leaders in the Senate, on both the majority and minority side, did listen to the needs that we made known day and night over the weekend and all hours of the night in all manner of fora, the donor States were allocated more funds. In our State, we managed to increase the funding and therefore the spending on highways. We will be able to put people to work. Some 22,000 jobs will be created in the next year from the Federal share alone and over 6 years, 135,000 jobs will be generated.

This is not a jobs bill, Mr. President. But the failure to act on this bill was a negative jobs bill. It was a job-destroying inaction.

Again, I commend the leaders on the Senate side for having moved forward in June to get a highway bill through,

and I am disappointed that our colleagues on the other side waited until October so that we are acting in the middle of the night making decisions and voting on the final terms that we have never seen and will not see for weeks now. Unfortunately, that is the only way we can get it done.

Mr. President, I again express my thanks to the leaders of the committee on both sides, to Senator SYMMS, to Senator CHAFEE, to Senator WARNER, in particular on our side, to Senator MOYNIHAN, about whom much has been spoken already, saying that he had a vision for a new kind of surface transportation program. We commend him for his farsightedness. I disagree with him on the application of certain principles, and he understood that. The louder I talked, the more patient he was. We did make changes in the bill. We did achieve significant adjustments so that the most serious inequities were addressed.

Missouri can probably never hope to get out of the donor State category. We do not expect that. But we do appreciate the fact that we will not be drained dry; that we will get a significantly increased share of our dollars back, and for that I express my sincere thanks to the leaders of the committee on both sides. I assure them that we look forward to working with them in the future. I hope that we will be able to come to an agreement in future years on how to allocate funds that will not depend upon a funding grab bag for projects or require last minute adjustments to work out the inequities.

Mr. SYMMS. Mr. President, will the Senator yield?

Mr. BOND. I will be happy to yield to my colleague from Idaho.

Mr. SYMMS. Mr. President, I want to say Senator BOND from Missouri and Senator GRAHAM of Florida and others working through "Pothole" JOHN WARNER made a tremendous contribution toward making this bill more equitable. I think that it was a bipartisan group. They were at odds with what some of us in the big Western States had in mind. We all took somewhat of a hit, more than we have in past highway bills, and they made a gain. I think they should be commended by their constituents for the efforts they have made and the persistence with which they have fought. They had their able friend, as we referred to him in the conference in the middle of the night. We started referring to Senator JOHN WARNER as "Pothole" John because he was so persistent about those States and equity in this program, and we do appreciate it.

I thank the Chair.

Mr. BOND. Mr. President, I conclude by again expressing my thanks to the Senator from Idaho. It was a bipartisan effort. We were offensive on a bipartisan basis and only the good humor and the patience of our colleagues permitted us to achieve this. I do not know what kind of sobriquets will be applied to my distinguished colleague from Virginia for the fights that he fought, but he ought to wear them with pride because he was a very strong voice for Virginia and for equity through this bill. I express my deep appreciation to him as well.

I yield the floor.

Mr. WARNER. Mr. President, will the Senator just yield for a comment?

I thank, Mr. President, all of those for my nickname after 10 years in this body. But had it not been for the steadfast leadership of the Senator from Missouri and the Senator from Indiana and others who were part of the sort of famous "FAST army" that was in the Senate at the time of the original Senate bill, we would not have been able to make the gains during the course of the conference that we did.

It was a bipartisan coalition. I happened to be, I believe, the only donor State conferee on the Senate side, but there were a number on the House side. I want to say it was leadership of the Senator from New York, Mr. MOYNIHAN, the Senator from Rhode Island, Mr. CHAFEE, the Senator from Idaho, who enabled us to make these gains and to finally recognize in the name of equity, not politics, that we had to go with the 90-percent guarantee which the distinguished Senator from Missouri referred to today.

I thank him for his kind remarks. But, again, it was his contribution, together with others, throughout this process, not just in the closing days but throughout the process. I thank the Senator.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, it is curious but gratifying that there are times—this is such a time—in which the clash of parochial systems can result in the national interest.

Individual Members of this body and the other body are, of course, primarily concerned with a bill like this with what it does for their own States or for their own congressional districts. But simply because there are so many voices, so many concerns, those who were primarily responsible for this transportation bill were required to consider with a degree of reason the needs and the demands of Members from each State in the United States.

So I want to join with the majority on this floor speaking in favor of the passage of this bill in expressing my thanks and admiration to the Senator from Idaho, to the Senator from New York, to the Senator from Rhode Island, to the Senator from Nevada, to all of those who worked countless hours to cause this bill to get before us, tardy as it may be, on what we all trust will be the last day of this session.

They have done a good job for the United States of America. They have done a good job for almost all of the 50 States. They have created a greater degree of fairness and balance than has been in existence in a number of previous bills. And they have offered to each State a greater opportunity to set its own priorities and to make its own choices within the highways and mass transit lanes in each of those States.

They have, for that matter, authorized much more for mass transportation than has been the case in the past.

Mr. President, I suppose it is somewhat easier for me to make these comments, as my State remains what is known as a donee State; that is to say, for every dollar in taxes which go into these programs out of the pockets of the citizens of my State, and their Federal gas taxes, that the State of Washington gets some $1.18 in return because it is in many portions of the State a thinly populated rural State, but in its urban areas it has particularly expensive highways and transportation systems because of various bodies of water and the constrictions and narrowness of the city of Seattle.

This bill takes some significant steps forward with respect to one form of transportation which is not quite unique to our State but on which it depends. It depends to a very significant degree on ferry projects, and that is to say there is a new program for $100 million that will be distributed among States with ferry projects on a competitive basis which is exactly the right way in which such money should be directed.

The primary beneficiaries are likely to be the States of Washington, Alaska, and New York, representing those States with the most significant amount of ferry traffic, but it is available to ferries in any State.

In any event, we find this to be a major plus in this legislation.

There are also various highway projects. There are demonstration projects in this bill for the State of Washington.

Personally, I believe I would have preferred all of the money to be distributed according to the formula more or less in the fashion of the original Senate bill. But at least the distribution of these demonstration projects has been smoothed out and made somewhat more fair by the efforts of the conferees from the South.

Most particularly this morning, however, Mr. President, I wish to speak to one portion of this bill which has been the subject of remarks so far today only by my close friend, the distinguished colleague, the junior Senator from Nevada, Mr. BRYAN.

This bill also includes the first reauthorization of the National Highway Transportation Administration since 1982. This body unanimously passed

such reauthorization much earlier this year. Later when this bill was being debated here on the floor, the Senator from Nevada and I prevailed upon the body to attach it as an amendment to this surface transportation bill. That turned out to be a most fortunate circumstance, as it seemed highly unlikely that the House Committee on Energy and Commerce would every deal with the independent National Highway Transportation Administration reauthorization bill.

Even so, we felt that it was a long shot to get this conference to accept that bill or any portion of it as a part of this transportation legislation. Nevertheless, it did so due to the efforts of five members of the Commerce Committee of this body, who were conferees for that purpose. The junior Senator from Nevada, whom I have already spoken to, who led the effort to pass the original bill through the Senate and who wrote many of its provisions; the chairman of the Commerce Committee, the Senator from South Carolina; my good friend from Missouri, Senator DANFORTH, all put in yeomen effort in coming up with a set of safety proposals which will be of great importance and great benefit to the people of the United States.

However, I believe that I may say that much of the reason that we have these safety provisions on this bill came as a result of the fortuitous circumstance that the chairman of the House Subcommittee, which deals with this legislation, is a close friend of mine and a colleague from the State of Washington, Congressman AL SWIFT.

Congressman SWIFT worked long and hard and diligently on his own behalf and with the chairman of the Energy and Commerce Committee, Congressman DINGELL, to persuade that it was time to work for automobile and other passenger vehicle safety. As a consequence, we have a bill that is at least 90 percent of the proposal which was passed by this Senate so many months ago.

One of the leading traffic safety private organizations in the United States states that this bill may save as many as 12,000 lives a year when it is fully implemented—12,000 lives a year, Mr. President.

I simply want to say that is a striking, magnificent, and a gratifuly statistic, that we could take steps here in the Congress of the United States that would result in lowering so sharply the number of traffic deaths, and by thousands more the number of serious injuries in automobile and small truck accidents.

The bill does so by making certain requirements, the most important of which is mandating air bags on both the driver and passenger side of both passenger automobiles and light trucks well before the end of this century; then by mandating rulemakings which will almost certainly result in new requirements on passenger cars side impact, with respect to head injuries, with respect to child-restraining seats, and a number of other areas, all of which are important to the safety of the people in the United States as they travel in their automobiles; and, almost all, or all of which are really beyond their own control because they are matters which are built into the very designs of these automobiles themselves.

So this bill is worthy of support not only because of the great work of the members of the Committee on Environment and Public Works, but because it is also in addition to the transportation bill a transportation safety bill.

Finally, I should like to say, Mr. President, that it is the case in almost all bills of this sort that the great bulk of the work in the conference committee is done not so much by individual Members of this body or of the other body, but by their staffs.

In that connection, I particularly want to commend Scott Cooper and the staff of Congressman SWIFT, with whom we worked from the beginning of this process, both the majority and minority staffers from the Senate conference committee, and most of all, my own staffer, Terri Claffey, who continues her streak in my office of seeing to it that when we take a great deal of interest in something, it almost invariably finds its way into the Statutory Code of the United States of America.

Mr. President, this is a good bill, and it should be adopted with enthusiasm by the Members of this body.

Mr. WARNER. Mr. President, I rise today to support the conference report on the Intermodal Surface Transportation Efficiency Act of 1991.

It is critical that this conference report be adopted because many States, including Virginia, have frozen further contract work on many important projects including the high occupancy vehicle [HOV] lane extension on Interstate 95.

Mr. President, foremost today I want to commend my conference colleagues majority leader MITCHELL, Chairman MOYNIHAN, the Environment Committee Chairman BURDICK, Senators CHAFEE, SYMMS, LAUTENBERG, REID, and DURENBERGER, and the majority leader. Their determination and commitment to an innovative transportation policy have brought together a conference report which addresses our urgent transportation needs.

As one of the leaders of a bipartisan group of Senators in the fight to amend the Senate bill last June in accordance with the FAST formulas, I renewed that fight in the conference and together with other FAST supporters we improved the formula during the long negotiations of the conference.

Although many are not fully satisfied with the results, I can assure my colleagues that genuine attempts were made to provide relief to highly populated States.

Progress was made to give the so-called donor States—those States receiving far less dollars in return than their highway users contribute to the trust fund—a greater return on their contributions.

During the consideration of the Senate bill, objections were expressed by many who believed the formulas used to allocate Federal highway trust funds were outdated and unevenly distributed among the States. Virginia, like other States, simply was not getting a fair return for the dollars paid into the trust fund.

For Virginia this conference report provides over $2.6 billion to meet transportation demands in the next 6 years. This amount far exceeds the $1.5 billion Virginia received from the trust fund under the current bill.

It is my hope that this increase in funds will begin to meet the many highway demands across the Commonwealth.

A cornerstone of the Federal and Surface Transportation Act or FAST bill which I originally sponsored was a 90-percent minimum allocation of the dollars each State contributed to the trust fund.

The conference report represents a significant achievement for donor States by increasing the minimum allocation program from the current level of 85 percent to the 90-percent goal.

This program is important because it is the safety net for donor States. It guarantees that whatever the annual allocation, no State will receive less than 90 percent of what their highway users pay into the trust fund.

While so much of our debate has focused on the dollar return for each State, I believe the conference report represents a new and users era in transportation policy. This is innovative legislation which will carry our transportation infrastructure into the 21st century.

For the first time, States will be given maximum flexibility to use their funds to meet their own pressing needs—whether these needs are for the Interstate System, bridge repairs, or primary routes.

Flexibility will allow Virginia and particularly the metropolitan regions of northern Virginia, Tidewater and Richmond to transfer highway funds to transit activities if it is determined that rail or bus service will more effectively serve the needs of the traveling public.

A result of this flexibility will be increased efficiencies in the use of these funds and increased performance of the transportation system.

A second important policy issue in this bill is the commitment to a strong National Highway System. This pro-

gram ensures the continuation of a national transportation policy by maintaining a system which links States with quality corridors.

With the completion of the Interstate System in the next 4 years, there is a continuing need to provide for uniformity and connectivity to all parts of the Nation for interstate commerce and national defense. A National Highway System fulfills this need.

Third, urban regions, like northern Virginia, Tidewater, and Richmond, will be given greater authority in the decision making and project selection process to address their critical congestion problems. Localities will now have the discretion to participate in directing highway dollars to specific highway needs or mass transit projects such as commuter rail or expanded bus service.

Fourth, the National Recreational Trails Trust Fund Act will provide funds to improve existing trails and build new trails for increased recreational opportunities. The structure of this program, which sends the funds directly to the States without Federal intervention, ensures the maximum use of these funds.

Mr. President, as a member of the conference committee, I wish to extend my appreciation to Chairman MOYNIHAN for his leadership and fairness in recognizing the concerns of the donor States. The conference report is a product of his vision to bring greater efficiencies to the existing transportation system, and to forge a new era in transportation policy.

I want also to recognize my Republican leaders on the committee, Senators CHAFEE and SYMMS, without whose fine work this conference report would not be completed tonight.

Mr. President, I would be remiss not to commend the Virginia Secretary of Transportation, John Milliken, and the many dedicated professionals at the Virginia Department of Transportation for their valuable assistance throughout this process.

Another critical project to Virginia and the Metropolitan Washington Area is the continuation of the Metropolitan Washington Airports Authority which operates Washington National and Dulles Airports.

The amendment which I offered is necessary because of the Supreme Court's decision holding unconstitutional the provisions of the MWA Act of 1986 which established a board of review with veto power over the decision making authority of the board of directors.

It is my full expectation that this amendment resolves these constitutional problems and allows the critical modernization projects currently under construction to continue at both Dulles and National.

For the safety and convenience of the traveling public, work that is approximately one-third complete must be allowed to move into the next phase of construction.

Mr. President, I believe the conference report on the Intermodal Surface Transportation Efficiency Act is a fair proposal. On the whole, it is good national policy—one that recognizes the legitimate interests of all regions of the country.

Mr. President, I urge the adoption of the conference report.

Mr. President, if there is any particular order, official or unofficial, I am glad to acquiesce. I intend to be here for a while to speak on the highway bill and participate in this colloquy. If any of my colleagues need to be recognized prior to the Senator from Virginia, I will so yield.

Not seeing anyone desiring that, I want to say that I was privileged to be a conferee on this bill. It was a very unusual and rewarding experience. I would like to recount some of the events that transpired in 14 days and 14 nights, 2 weekends, and perhaps the most painful for me, as others, a lot of forgoing of family time.

Anyway, it was worth it in the end. I would like to—before I refer specifically to the commendations of the conferees—I would like to refer to the staff. I have been here a number of years, but I have never seen a more consistent, hardworking staff of individuals than on this particular piece of legislation. It was complicated by the need continually to have access to computer runouts, and we were dependent in large measure on the infrastructure of various Federal departments and agencies to provide information, causing delays from time to time, but our staff was always there.

Turning, to my staff, Ann Loomis and George Cartagena, I thank them for their work for me and for my State, and for their work with the other staff members. Well done to all.

Turning to the conferees, and the most unusual leadership of the Senator from New York, Mr. MOYNIHAN, who has always taken what I call the 12 to 4 watch. He was there constantly on the bridge, and by his side, my lifetime friend, the Senator from Rhode Island, Senator CHAFEE. So it was a Navy and Marine Corps team. To strengthen the Marine Corps, we had the Senator from Idaho, Senator SYMMS.

We conducted this, in some ways, like a military operation, because Senator MOYNIHAN continuously announced there would be "attention on deck" as we started every one of our conferee sessions. In those private meetings in the majority leader's office, Senator MITCHELL was by our side throughout this conference, and his steady hand and his determination to see that this piece of legislation passed was unique.

This was a very rewarding experience for this Senator, and a very pleasing one. I got to know much better some of my colleagues as a result of this period, and I hope that the Senate recognizes that there was leadership at all times in this conference, leadership that not only was achieving a bill, but was trying to achieve equity among the several States.

I had been associated with those for some months in the Senate developing the consensus of what we call the FAST proposals. That was an effort to bring up to date the formula, to reflect a more current census, to try and allow the donor States to have a greater percentage of the funds that they contribute to the tax base.

And in the end, while we may not have achieved all that the donor States desired, it was through the leadership of this conference, House and Senate, which enabled us to achieve gains that I think, frankly, as the sole donor State on the Senate side, I had not anticipated we would achieve. But we did it, and I thank all.

Of the conferees, I have mentioned the three leaders, but I also thank our chairman, Senator BURDICK. He also was there on the 12 to 4 watch continuously. And while others may have taken the role of talking a little more, from time to time his incisive judgment and background were interjected at critical points.

Throughout the conference Senators LAUTENBERG and REID were in attendance exercising, at appropriate times, a turning of hand to keep the conference moving forward. Like all intensive meetings, often humor can be an effective tool—they were masters.

Senator LAUTENBERG, Senator REID, and Senator DURENBERGER, all gave of themselves and of their wisdom, and indeed, while they had in mind their own States, we were a team seeking equity, and equity we did achieve.

In particular, I want to thank Congressman PAYNE of the Virginia delegation. He is on the House committee, Chairman ROE's committee, maintaining constant contact with Chairman ROE, myself, and others. And together with our Highway Secretary, Secretary Milliken of Virginia, I think the three of us provided a voice for Virginia which enabled our State, I believe, to fare very well under this piece of legislation.

Mr. President, indeed, many are still somewhat unsatisfied. But I believe there were genuine attempts to try and close these gaps. Progress was made to give the so-called donor States, those States receiving less dollars in return than their highway users contribute to the trust fund, a greater return of their contributions.

During the consideration of the Senate bill, objections were expressed by many who believed that formulas used to allocate highway trust funds were unevenly allocated, and they simply were not getting that fair share in return for the dollar paid into the trust fund.

For Virginia, this conference report provides over $2.6 billion—far greater than the previous conference report—to meet transportation demands in the next 6 years. This amendment far exceeds the $1½ billion Virginia received from the trust fund under the current bill, which is now expired. It is my hope that this increase in funds will begin to meet the many highway demands across the Commonwealth of Virginia.

A cornerstone to the Federal Aid Surface Transportation Act, the FAST bill, which I originally sponsored with many others in this body, was a 90-percent minimum allocation for each State that contributed to the trust fund. The conference report represents a significant achievement for donor States by increasing the minimum allocation program from the current level of 85-percent to the 90-percent goal.

The program is important because it is the safety net for donor States. It guarantees that whatever the annual allocation, no State will receive less than 90 percent of what their highway users pay into the trust fund.

Mr. CHAFEE. Mr. President, I wish to take this opportunity to thank the distinguished senior Senator from Virginia for his substantial contributions to the conference which we held. First, I thank him for his kind comments about the role that I had and the part that all of us had who were involved with the conference, including, of course, the Senator from Virginia.

I do want to make a particular comment about his role. The Senator from Virginia, as he pointed out, was the only Senate conferee who came from a donor State, and thus he had a particular interest. And, as he pointed out, he was from one of the States that would have done better under the so-called FAST approach. But the Senator from Virginia understood the total problems that we are trying to resolve in there, and he certainly was a voice for equity. As a result of the efforts of the Senator from Virginia, we were able to make greater funding for those donor States than perhaps originally we could have contemplated achieving.

So I thank my good friend and longtime friend and very able colleague for his contributions, which were outstanding throughout the conference. In addition, it was always a pleasure to work with him.

Mr. WARNER. Mr. President, I thank my friend from Rhode Island.

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

Mr. MOYNIHAN. Mr. President, before the Senator from Virginia leaves the floor, let me first thank him for his generosity to us. It was the longest midwatch I have ever stood, but it is coming to an end. There is a light on the horizon.

But the Senator from Virginia typically left out one aspect of this legislation which is his and his alone, without which we would, all of us, be the lesser in the days ahead. That is that, thanks to him, part of this legislation enables the redevelopment of the National Airport, built in the 1930's, and Dulles Airport, that great sign of achievement of the 1950's, to go forward uninterrupted. A Federal court held that the authority building the project was unconstitutional. For some reason that escapes me, but it was clear to the court, and it was going to close down, not just putting the project and the efficiencies and the expenses at jeopardy, but putting the public at jeopardy. The safety issues were very real.

He did that. He persuaded a room full of House conferees that wanted to know what on Earth is this, that it was something that ought to be done. It was masterful. It was appreciated.

Mr. WARNER. Mr. President, I thank the distinguished Senator from New York. Again, it was his leadership that enabled us to get this bill. But I think Senator CHAFEE and I might well recommend to the Department of Navy that, for his contribution to the U.S. Navy through the years and now this particular bill, we should elevate him, I say to former Secretary CHAFEE, to the rank of commodore, Commodore MOYNIHAN, henceforth no longer lieutenant junior grade, Commodore MOYNIHAN.

And to my friend, Senator SYMMS, because Senator SYMMS will be departing the Senate after a distinguished career at the end of this term, and in recognition, all conferees—and I remember the moment during the course of the conference when it occurred—determined that we would name the trails program, which was a dream of this Senator for some 3 years, name it the Symms Trails Program.

STEVEN SYMMS is an outdoorsman. He comes from a State of outdoors persons. And he himself has enjoyed the use of his trails in his State and elsewhere in America for these many years, but he wanted to forge ahead, independently of what is in place today to work on trails, with a program which he fought tenaciously in this conference to keep isolated to itself so it can get done and the money would not be filtered through a large infrastructure of bureaucracy and thereby dwindled by the time dollars finally got down to the recipient. He kept it intact, the dollars intact, to flow to the States, and he also solved a rather delicate political balance, not Democrat and Republican, not Senate and House, but the politics of the trail, the politics of the users of the trail, be they walkers, horseback riders, motorized of several types. He was able to strike that balance, and, in recognition, the U.S. Senate, and, when this is signed into law, the President will name this program for our distinguished friend and colleague from Idaho. It was well done.

Mr. President, during the conference Senator SYMMS called me "Pothole Johnny" because of my determination to repair and maintain the roads in my State.

Senator SYMMS called me Pothole Johnny in this conference, but I know that his name will last forever once this program is named after my distinguished friend.

Mr. SYMMS. Mr. President, I thank my colleague for his kind words and I will just say that with WARNER, SYMMS, and CHAFEE, three marines, and our gunnery officer MOYNIHAN, there was no way we could lose this. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Florida, Mr. GRAHAM, is recognized.

Mr. MITCHELL. Mr. President, I inquire if the Senator will yield to permit me to make a unanimous-consent request.

Mr. GRAHAM. I yield.

Mr. MITCHELL. Mr. President, I thank my colleague.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, the unanimous-consent request I am about to make has been cleared by the Republican leader and by all Democratic Senators.

I ask unanimous consent that upon the disposition of the conference report on H.R. 2950, the surface transportation bill, the Senate proceed to the conference report on the crime bill, H.R. 3371, and that without any intervening action or debate, a vote occur on the motion to invoke cloture on the conference report at that time and that it be in order to file that cloture motion at this time.

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

OMNIBUS CRIME CONTROL ACT—CONFERENCE REPORT

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I send a cloture motion to the desk and I 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 the debate upon the conference report to accompany H.R. 3371, the Omnibus Crime Control Act.

George J. Mitchell, Lloyd Bentsen, Wyche Fowler, Richard Shelby, Charles S. Robb, Wendell Ford, Alan Cranston, Tom Daschle, Al Gore, Jeff Bingaman, J.J. Exon, John Glenn, J.R. Biden, Jr., Harry Reid, Sam Nunn, and Frank R. Lautenberg.

Mr. MITCHELL. Mr. President, Senators should, therefore, be aware that there will be two votes, one on the conference report on the surface transportation bill, immediately followed by a vote on the cloture motion on the conference report on the crime bill.

There is no time limit on debate on the surface transportation bill, but I hope that this debate can be concluded as soon as possible, giving every Senator ample opportunity to express his or her views. Those Senators who feel they can do so, I urge them to either put their statements in the RECORD or to make them following the votes so that we can proceed as promptly as possible and in a manner consistent with the schedules and demands upon as many of our colleagues as possible.

Mr. President, I thank the Chair.

Mr. LEVIN. Mr. President, will the majority leader yield on that point?

Mr. MITCHELL. I yield.

Mr. LEVIN. The majority leader asked me how much time I would be needing. I think I indicated to the majority leader that I would need about 20 minutes probably and I have some materials that I would like to put in the RECORD, and I would need the managers on the floor at that point to help me get certain information in the RECORD.

Mr. MITCHELL. I am going to yield the floor, and I thank the Senator from Florida. Is it possible at this time to consider a time limitation that would accommodate those Senators who wish to speak?

Mr. GRAHAM. Mr. President, I do not think so at this point.

Mr. MITCHELL. Mr. President, I thank my colleague, and I yield the floor.

Mr. President, I ask for the yeas and nays on the conference report.

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 Florida is recognized.

SURFACE TRANSPORTATION ACT—CONFERENCE REPORT

The Senate continued with consideration of the conference report.

Mr. GRAHAM. Mr. President, this is much to commend in this legislation. It has been described as visionary. That is an appropriate description. The emphasis which this bill places on greater flexibility in terms of the use of funds blurring many of the former airtight compartments around modes of transportation to allow the process and the performance of transportation to be the guide, and to allow those decisions to be made more at the State and local level rather than in Washington are very positive.

Also positive is the interest in the question of where should our transportation system be not in the next 5 years but in the next 25 years. Clearly, the United States has completed one major epoch in the transportation history with the completion of the interstate system. We are now about to move on to some new period. What will it be? This bill suggests that that future should have as a major component the adaptation to America of the current and soon-to-be-developed state-of-high-speed surface rail transportation. I strongly support that movement. It is a movement which many of the States have been providing leadership in. The State of the Presiding Officer today has provided exemplary leadership in its interest with its neighboring State of California in developing such a system. The same has been true of States in the East, the wide West, and in my own State of Florida.

I strongly commend those positive provisions of this legislation.

However, I regret to say, Mr. President, that I would have to describe this bill as being a bill of missed opportunities, opportunities that were available and which were ignored. Of most significance in those missed opportunities were the opportunities to see this bill as a significant part of our Nation's immediate and longer term economic growth strategy.

We are now speaking a great deal about strategy. The President over the past several days has had different positions, but as of yesterday at least he said he enthusiastically supported the Congress adopting a growth program. I am personally very pleased the President has now taken that position, that we are not going to be asked to wait until January or February to consider the plight of millions of American families who are in deep pain as we stand on the eve of our national day of Thanksgiving, whose pain unfortunately is likely to be even more intense as we approach the great holiday seasons of the end of December.

Mr. President, this bill has the potential of being a significant part of our Nation's immediate and long-term economic growth program.

Let me suggest what I think have been the missed opportunities.

First, in terms of the short range, which I would define as the next 6 to 18 months. While it has been said—and I fear that it will be represented maybe on both ends of Pennsylvania Avenue—that we have contributed to a substantial expansion of job creation as a result of this bill, the facts do not support that assertion.

The facts are essentially these, Mr. President. We spent this year on highway funds approximately $16.5 billion; Federal highway funds, $16.5. This bill will propose to spend slightly less than $17 billion in 1992, virtually no increase in Federal funds, the increase being hardly what would be required in order to maintain equivalent purchasing power.

At the same time, Mr. President, the States, wracked with their own financial problems, are beginning to reduce their expenditures on transportation. It is unfortunate that the statistics are so inadequate and out of date, but what is available indicates that between 1989 and 1990, in terms of real dollars, the States actually reduced the amount of funds that they spend on the maintenance and expansion of their transportation system.

So here is an opportunity to create real jobs. We know from the Department of Labor's analysis that for every billion dollars spent on highway maintenance, some 40,000 jobs are created both directly in the project itself and those that are influenced at a secondary and tertiary level. We are not going to have any of that as a result of this bill. We essentially are going to continue to employ the number of people who have been employed, but the opportunity to use this bill as an engine for immediate stimulation for the American economy has been foregone. I am very distressed with that.

I am further distressed that so much of this money is being spent on projects that are likely to not have a contribution to the American job creation during this period when it is most needed. If you look at the list, Mr. President, of demonstration projects—a subject that I will return to at greater length later—those are not projects that are going to be started in the next 6, 12, 24 months. In fact, I understand that a substantial portion of the demonstration projects that were authorized 5 years ago have yet to commence. So, Mr. President, we are diverting funds into areas that are of suspect value and of almost no consequence in terms of stimulating our economy at this time of serious recession.

Then it might be said, well, although we missed the opportunity for an immediate contribution to restarting the economy, at least we are making an investment in our future. We are contributing to a better infrastructure, highway, mass transit system for the future.

That argument assumes what I think is clearly correct; and that is, if you were to ask the question, what could the Federal Government do over the next 25 years that would help to create the foundation for a competitive American economy, clearly one of the highest blocks on that foundation would be a major national commitment toward a strong transportation system. The studies are legion, linked the relationship between adequate expenditures on transportation and economic growth.

Are we, with this legislation, making that kind of contribution toward a stronger America? The answer, unfortunately, Mr. President, is no.

According to the U.S. Highway Administration, the current backlog of

needs in our Federal-aid highway system is $491 billion. That is if we were to say, "Let's stop. Time out. As of today, let's concentrate on what is required to bring up the maintenance level of our existing highway system and to add the capacity necessary for the increased volume of use." How much would it cost to do that, Mr. President? Well, the best experts estimate $491 billion.

Well, those effects on our highway system, of course, are not going to stop. Every day there is a further gradual deterioration of the system. And anyone who rides on the Federal-aid system, from the best interstate to the most remote and distressed rural road, can give you plenty of examples of what is happening in our highway system. It is estimated that over the period of this bill from 1992 to 1997, we will add to that inventory of unmet needs, $223 billion. So that by the end of the period funded by this bill, our total unmet needs will be $714 billion, if we did nothing.

Well, we are not going to do nothing. In fact, according to this bill, we are going to spend $114.8 billion toward meeting that need.

Mr. President, when I subtract $114.8 billion from $223 billion, my conclusion is that the highway systems will be over $100 billion worse off, worse off, at the end of this bill than they are today. So we are—unless someone wishes to challenge these statistics, and I have stated them on this floor several times and no one has sought to do so—guaranteeing to America, a poorer, less adequate, less well-maintained highway system. We are guaranteeing to American drivers longer delays, less safe highways than we have today.

Unfortunately, Mr. President, it is not just in the highways that we are making such a guarantee. The American Public Transit Administration estimates today that the current backlog in public transit is $25 billion. That is, the amount required to maintain and bring up to a standard of adequacy of service in our public transit systems today is $25 billion; that over the next 5 years—I think this is an alarming figure because it indicates the rate which our public transit system is disintegrating—we are going to add $31.2 billion of additional needs for maintenance, modernization, and the replacement of the existing system, and $28.8 billion of need for capacity expansion, or a total of $60 billion of additional public transit needs over the period of this legislation.

What are we proposing to spend of Federal funds over this period? Thirty-two billion dollars.

So, again, the consequence of passing this legislation is going to be to add approximately another $50 billion in our Nation's unmet needs in terms of public transportation.

How can we purport that this bill is a contribution to America's economic strength when today it will create virtually no new jobs, when this type of program is one of the most potentially significant for stimulation of the economy, and where it guarantees that 6 years from now we will have worse highways and worse public transit systems?

I ask if anyone—and I see we have Senators who were on the conference committees, both on mass transit and highways, on the floor—if someone would like to challenge those statistics and make the case that we are, in fact, going to have an economic stimulation from this bill and that we are going to make better provisions for America's highways and public transportation systems over the next 6 years, I invite them at this point to interrupt and offer that contrary evidence.

Mr. President, as has happened repeatedly in the past, no one wishes to come forward and challenge that statement.

This is a missed opportunity because we could have done better. We could have, for instance, targeted these funds today to the area of highway activity that would have had the greatest contribution toward job creation, in which there are enormous needs in every State of America, and that is the rebuilding and maintenance of our Interstate System. That one program has one of the highest ratios of public funds expended to jobs created, doing things that will contribute demonstrably to a stronger, long-term economy for America. We eschewed that opportunity so we could pour more money into these suspect demonstration projects.

Mr. President, in summary, on point one, this is a bill of missed opportunities, a bill that, while it had great vision for the 21st century, has been blind to the opportunities immediately before us.

Second, I am deeply concerned about the process by which this bill comes before us. Three hours ago we met with staff to talk about the public transit provision in this bill. We asked could we see the language? Could we see the distribution of how these funds, $32 billion, will be spent? We are public stewards. Our constituents expect us to know what it is we are voting for.

What was the answer to our request for information within the shadow of the time we are going to be asked to vote on this bill? It will be available next Tuesday—available next Tuesday.

How are we supposed to adequately represent the interests of our citizens if we do not have the information until almost a week after we voted for the bill?

Last night, the House voted on a bill which it did not even have before it until the last second and could not possibly have read nor understood. We heard, earlier today, the Senator from New York applauding one of the staff members for his alacrity in being able to find the copy of the bill—that was residing on top of the filing case in the Dirksen Building—and rushing over at flank speed, so that it could be physically in the House, so that they could vote on the bill.

Is that not a travesty of how the legislative process is supposed to work?

Mr. President, there are parties who have deep interest in this who are not within a 100-yard radius of the U.S. Capitol. There are serious people back in the Tallahassees, the Carson Cities, the Santa Fes, the Albanys, the other State capitals who we are going to be looking to, to implement this bill, whose advice and counsel would be helpful to us in understanding whether this bill meets appropriate standards of public policy. They are completely shut out of this process, to say nothing of interested citizens, of which there are millions, who are concerned about how their tax dollars are being spent and what kind of effect that expenditure will have on the quality of their lives and their own economic futures. All those people have been effectively denied an opportunity to participate, to understand, to be a significant—not significant—to be even a trivial part. They were not even allowed to come into the stadium to sit at the farthest reach of the stands, much less be close to the field.

What does this say about America's confidence in our democratic process? If you want to know why some proposals, such as term limitation, are gaining so much public support, it is when they see responsible public bodies—this one, which has been known as the world's greatest deliberative body—function in the manner that we are today on this important legislation.

The third point is there are a series of serious, egregious problems with this legislation. Let me just mention a few.

A, the formula. It is hard to believe. I think there was a line in the movie "Casablanca" in which one of the characters in jest said that he was "shocked, shocked, shocked" to find out that some illegal activity was taking place in Humphrey Bogart's bar.

We should be shocked, shocked, shocked, to find out that we are about to vote on a transportation bill that will spend almost $150 billion of taxpayers' money from now through the year 1997 and we are going to do this using the 1980 census as the basis of distribution—shocked, shocked, shocked that we would do such a thing.

Mr. President, we should also be shocked, shocked, shocked because we were not required to do this. It has been stated that we just were without options, that we had to do this, that if we did not adopt this 1980 census we would not have any way in which to go about distributing these funds.

Quite to the contrary. In fact, 4 years ago the Department of Transportation

for the States of America, recognizing that the formula that had been adopted in 1987 was neither equitable nor efficient in terms of meeting our future transportation needs, and anticipating the end of the interstate era—in fact, the senior Senator from New York has restated a speech that many of us heard him give in 1987 in which he said this bill, the 1987 bill, "will be the end of the interstate era. When we next return to this subject, we will be dealing with the postinterstate period of American transportation."

It is a rather sad commentary that we begin the postinterstate era by dragging in the last remnants of the old interstate era, all the way back to the 1980 census, and we did not have to do so.

Recognizing that these opportunities would be available, State departments of transportation began to develop ideas for future surface transportation programs. A year-long information gathering phase, which included public hearings in every State in the Union, was held. Numerous meetings occurred during which ideas were developed to set a new course for American surface transportation. The organization which initiated this activity was the American Association of State Highway and Transportation Officials, an organization whose members consist of the 50 State secretarys of department of transportation. Extensive supporting documentation was developed, including a set of recommendations, including a report entitled "New Transportation Concepts for a New Century"—a bold title for a bold report.

These recommendations were approved by 48 of the 50 States at a meeting held in late 1989. Mr. President, 48 of 50 States approved that document as recently as 1989. It represented the best ideas of the transportation professionals in this country.

Two new principles were recommended, a categorical program supporting a national highway system and a flexible system to address increasingly diverse and intermodal needs.

Several States took these recommendations further and developed a more specific funding formula for the categorical programs.

Mr. President, we had the option to adopt that program which was the result of extensive professional and public development. We rejected that option, and we now have the formula that is before us.

In addition to a formula which uses the 1980 census and, in fact—that fact being the cause and the effect of that being a formula, the formula that we are going to be adopting today, Mr. President, when it is reduced to computer columns has a total of 17 vertical numerical columns. Of those 17 columns, column No. 6 is labeled 90-percent minimum allocation. That is the column that is supposed to bring all of the States up to a minimum of 90 percent, a subject that I will discuss at more length later.

There are 20 out of the 50 States that have to be given a minimum allocation under this formula. If the Presiding Officer had been Governor of Nevada and an education finance formula had been presented from the legislature which causes 40 percent of the school districts in the State to have to get a minimum allocation because the basic formula was not sufficiently equitable to treat all of the school districts with some elemental fairness, that bill would have been vetoed and sent back to the legislature almost instantly.

The whole purpose of a formula is to be able to treat disparate entities with some level of policy equity. When you have a formula that ends up that 40 percent of the participants do not even meet what you had determined previously to be the minimum standards, you have a warped formula that requires not further massaging of minimum allocations but surgery on the formula itself.

But it does not stop there. That is column No. 6 out of 17, which is the so-called 90-percent minimum allocation. Move over to column No. 8. We have the Bentsen minimum allocation, another effort to bring equity to a formula which has failed to do so. We move over to column No. 11 and we have hold harmless, a third attempt to reconfigure an essentially distorted formula to meet some standard of equity.

That is not all, Mr. President, because then we move over to line No. 14 and we have a 90-percent of payments column.

So of the 17 columns, 4 are efforts to provide some degree of equity which the fundamental formula fails to do.

Those inequities are perverse.

In a conversation earlier today with the Senator from Michigan and the staff of the committee, we were told that one of the reasons why States that are supposed to get 90 percent in fact end up with 83, as is the case with the State of Florida, is because in order to fund all of those 4 columns that are supposed to be the rectifiers of the unfairness, you have to take money away from the very States who are supposed to be rectified. And so they end up losing a second time.

Mr. President, we have an odd thing that has happened in these formulas. We had a Civil War in this country from 1861 to 1865 and brought a number of States to the conclusion that they had to secede from the Union. I am not suggesting that we ought to return to those days, but I am saying that it is ironic that we have been able to come up with a formula in which every State, save one—and I might collaterally say that State happens to have the ranking member of the House Public Works Committee as a member of its congressional delegation—every member of the Confederacy, plus all of the border States—Missouri, Kentucky, Oklahoma—are losers, are donors under this formula.

The region of the country which has traditionally been thought of as the area that needed the greatest assistance in order to strengthen its economy, to become a full participant, the area of the country which Franklin Roosevelt identified as one requiring special attention, that is exactly the region of the country which, under past and current distribution of highway funds, has been for some perverse reson singled out for malicious mistreatment. The gentle statement becomes even more acute when you put it into a specific category.

Let me just use the example of a couple of States which I have used in previous debates. So the Senators from those States can be ready if they would like to respond if I misstate some fact. But the State of Connecticut is one of the wealthiest States in the country. The State of Alabama, unfortunately, has one of the lower per capita incomes in the country. The State of Alabama has 4,062,000 people, according to the 1990 census. Connecticut has 3,295,000 people. Alabama has a land area of 51,000 square miles; Connecticut has 5,000 square miles. Alabamians and their visitors consumed 2.102 billion gallons of gasoline in 1989; Connecticut, 1.493 billion. Highway taxes. Alabamians paid $260 million into the fund in 1990; Connecticut paid $142 million into the fund.

Those are just some general descriptions of those two States. With those kinds of numbers before you, how would you assume a highway bill would treat those two States? How do you think that Alabama and Connecticut ought to be treated?

I mentioned that Alabama contributed 2.09 percent of the total Highway Trust Fund last year. What is it proposing to get back under this bill? Alabama will receive 1.80 percent return. Connecticut, which contributed 1.14 to the highway fund, will receive 1.74 percent return.

Mr. President, I know there are some peculiarities. I know that Connecticut is getting some reimbursement for some interstate projects that have been authorized and not billed. There are some other refinements.

Mr. President, there is no logical justification for a formula that has that result in two States that are so disparate and where the result is so counterintuitive to exactly what you would think it would be based on size, population, contributions to the highway fund, economic status or other relevant considerations.

We are being told that this egregious formula, which has all of these perverse implications, is going to be papered over because we are going to get

90 percent of what we contributed to the fund. I have a sheet, Mr. President, which purports to say that the State of Florida, as an example, will, in fact, get back 92 cents on every dollar that we send to the fund.

That, Mr. President, I assert is a phony figure and it is phony for several reasons: First, because it almost treats us as being fools. That formula is based on taking the amount of money which your State will contribute to the Highway Trust Fund over the life of this bill which, in the case of Florida, is $5.045 billion and determining what percentage that is of the total that will be contributed by all 50 States, which is $102.852 billion.

In the case of Florida, it works out to be 4.9 percent. I am saying that if you get 90 percent of that amount that you contributed, you should be happy; that is your minimum allocation. Why not?

The reason why not, Mr. President, is because we are not spending $102 billion over the life of this bill. We are spending $114,784,000,000 out of the highway trust fund.

How can you spend more than you are taking in? The answer is, as has been stated earlier, because we have made the decision to begin to spend down the highway trust fund, a trust fund which has been growing over the last decade.

And with whose money has it been growing? It has not been growing with the money from the States that are getting back more than a dollar for a dollar. The trust fund has been built up because of States like Florida, which, according to this chart, using their same method of calculation, has been getting back 77 cents over the last 5 years of that 23 cents we did not get back, some of it was redistributed to other States. Some of it stayed in the highway trust fund and contributed to the fact that that trust fund now has almost $20 billion of accumulated surplus, and that $20 billion is now being spent down.

Mr. President, if we were to get the same proportion, 4.9 percent, of the dollars which are coming out of the trust fund, as we are supposed to get of the dollars that we are now going to be putting into the trust fund, the actual proportion of our return would not be the 92 cents as stated on this chart but would be 83 percent. We are being asked, Mr. President, for another 6 years to raise the taxes of our people in order to continue a tax which would otherwise lapse and then get back 83 cents on the dollar for the balance of a period of funding of this proposal.

Mr. President, I am, as the man in Casablanca, shocked, shocked, shocked that we would even consider such a proposal.

That is one egregious detail of this formula. Let us turn to another one, the demonstration projects. These foreseen inducements to passage have started as a small piglet and have now become a very large hog.

In fact, they grew substantially——

Mr. McCAIN. Will the Senator yield for a question?

Mr. GRAHAM. Yes, I will yield.

Mr. McCAIN. Mr. President, is the Senator aware that some of us who live in the West made plans to be with our family for Thanksgiving, and it takes a long time to get out there? We had planned on leaving yesterday, according to the direction that we were given. We have massaged this issue enormously, for tens and tens of hours before this body, and some of us would like to be with our families for Thanksgiving.

Now, if the Senator from Florida would like for us to come back on the day after Thanksgiving, or the following week, that is fine. But I would hope that Senators in this body who live in the East would show consideration for those of us who live in the West, who would like to get home with our families to celebrate this very important holiday.

I would appreciate the Senator from Florida answering my question.

Mr. GRAHAM. Mr. President, we would like to be home celebrating with our families at this very hour, but we have public work to do. After we complete this very important issue, we will be dealing with other questions important to the economy and the quality of life for the citizens of our State.

I deeply regret, as does the Senator, that we are now at the last hours before Thanksgiving considering this legislation. I would be perfectly happy to have this legislation deferred until a later date where we could give it the kind of close scrutiny which I think it deserves. That apparently is not an option that we have. And so whatever efforts we want to give to analysis, to let the people of America, who have been completely shut out of this process, have some idea of what it is we are about to do, seems to be only available to us now.

If the Senator has another suggestion of how we could proceed in order to inform the people before—not after—we have committed ourselves to this egregious proposal, I would be receptive to it.

In the absence of that, I would like to continue with what I consider to be the second major defect of this proposal, and that is the demonstration projects, these little piglets that have now become giant hogs.

When the House reported its bill, Mr. President, it had approximately $5 billion of specific demonstration projects. These are the sheets of those projects. The House also had $900 million that was in a fund they called minimum allocation. Theoretically, those States that did not get an equitable amount under some concept of equity of projects got some of that $900 million.

When the bill comes back from the conference committee, we do not have $5 billion of demonstration projects; we have $6.484 billion of demonstration projects and no minimum allocation. That is, we have added approximately $1.5 billion of specifically delineated demonstration projects over the course of this conference committee through a process that was largely behind a veil, a wall, a door of secrecy.

I would like to know—and maybe as we get further into the debate, somebody will answer the question—where is the beef? Where is that $1.5 billion that has apparently gone from somewhere into these additional demonstration projects?

There are some egregious things in these demonstration projects. I am not going to mention him by name, but there is a Congressman from a State not far north of here who has an important position in the House Public Works Committee. Let me just go down the list of projects that were in the original House bill. We cannot get the list of projects that came out of conference committee, so I cannot tell you whether there have been any additions since that.

But just to show you how well the House took care of its Congressman, he got $9.2 million for upgrading a highway, $103.6 million for improving another highway; he got $20 million to construct an access road off another highway—this is one Congressman. This is not a whole State, Mr. President. This is one congressional district—he got $4 million for highway improvements; $1.84 million for what appears to be a local road improvement; $8 million for another local road; $52 million to relocate a Federal highway around a particular community in his district; $1.6 million for safety improvements; $40.8 million to relocate another highway around another city; $35.1 million to construct a four-lane highway between two cities; $8.8 million to add a center turning lane on a particular road; $7.12 million to widen and extend Chestnut Avenue; $33.6 million to widen Route 30—that is not it, Mr. President—$.35 million for a timber bridge; $14.4 million to relocate a railroad; and that seems to be all.

Mr. President, I have not run the calculation, but I would suggest that that one congressional district probably got more demonstration projects than half the States in America. We are going to vote for a bill that says that is our priority of the appropriate expenditure of public funds?

Mr. President, we come to the third egregious aspect of this bill, and that is the item called "reimbursement." I mentioned earlier that we have a 17-column computer sheet. Number 10 is "reimbursement," and that distributes an even $4 billion.

The theory here, Mr. President, is that there were States that had made a

contribution to the Interstate System before there was an Interstate System, States that had built stretches of highway that were later incorporated into the Interstate System, and therefore deserve to be reimbursed for that.

This is not a new issue. In fact, Mr. President, the original interstate bill, the 1956 Federal Aid Highway Act, section 115, instructed Congress to determine whether or not the Federal Government should equitably reimburse any State for a portion of a highway, toll or free, which completed construction or had contracted its construction between August 2, 1947, and June 30, 1956. The date of August 2, 1947 was specified in the act because it was the date of original designation of the Interstate System pursuant to section 7 of the Federal Aid Highway Act of 1944.

So in 1956, when the issue was fresh before the Congress, Congress was just about to launch this major national effort that had been first authorized during the last years of World War II—we are now about to start it. They said, let us look at this question of equitable treatment of States which have made such contributions.

The 1956 act study determined which highways were to be eligible for consideration for such reimbursement of their cost and their depreciation. The study found that of the 38,548 miles within the approved Interstate System, the miles which met the criteria for consideration for reimbursement totaled 10,859 miles, or 28 percent of the original toll. The cost of the eligible highways totaled $6.9 billion and depreciation totaled $174 million. Thus the total cost, less depreciation, for the highways eligible for consideration for reimbursement amounted to $5.92 billion, of which $2.5 billion was accounted for in toll roads, $3.4 billion in free roads.

After the completion of this study, which was in 1958, it was submitted to the Congress. Congress did not determine that the results mandated reimbursement to the States. So the Congress, which was most actively involved in the initiation of the Interstate System, made a decision in 1958 that reimbursement was not appropriate.

This issue was reopened in the Senate Surface Transportation Act by a provision which called for an update of this 1956 study to be conducted and transmitted to the Senate Environment and Public Works and the House Public Works and Transportation Committees by October 1, 1993. That is where the issue was as the bill left the Senate.

My understanding is there was no provision relative to this reimbursement issue in the House bill. So in that state what happens in the conference? What happens if the conference is, all of a sudden, a full-blown $4 billion reimbursement program emerges. And is it a program that, as the 1956 study had called for, closely analyzes cost and depreciation eligibility. Was the road built to the construction standards that were required for the interstate? Was it that?

Well, if it was such a study, it is rather curious. Just by sheer accident, the States of Alabama, Alaska, Arizona, and Arkansas each had exactly $20 million of those roads. Is not that a coincidence? I could go down the list.

There were lots of others that happened to have exactly $20 million, like Colorado for instance, like Wyoming, Wisconsin, and West Virginia, which all had just exactly $20 million of eligible roads with appropriate calculation for depreciation that could be included.

Mr. President, what word can one use to describe a process and a result as egregious as this? We bring appropriate public disrepute upon us when we act in this manner.

Mr. President, it has already been mentioned as one of the other aspects of the bill, that the bill is overfunded. We do not know whether it is overfunded by $1 billion or $2.5 billion. Both numbers have been suggested.

I understand that we may be getting a letter from the chairman of the Budget Committee later today suggesting a waiver of the Budget Act in order to be able to accommodate this bill. At a time when we are trying to operate with some sense of fiscal prudence, is it appropriate at the last hour before we recess to be passing a bill that is significantly over what we have agreed to be our budget limitation?

Let me suggest as a fifth egregious error that I believe that we really are undercutting the willingness of the American people to continue to support a national transportation system acting the way we are.

I happen to believe that there is an appropriate Federal role in transportation that has played an important part in building the strength of this Nation. That is not an opinion which has always been held. The man who at one time was the third President of the United States from the State of our Presiding Officer felt that it was inappropriate for the Federal Government to be involved in these types of public works. It was one of his major clashes with his political adversary, Alexander Hamilton.

As recently as the mid-1950's, the Interstate Program was defeated in Congress before it was finally adopted, defeated based on the proposition that the Federal Government should not be as engaged in highway finance as the Interstate Program contemplated.

I think that those who voted in 1944 to establish and in 1956 to fund the Interstate System deserve our applause and appreciation for what they did. I hope that we will be able to act as Federal legislators in ways that will justify the applause and respect of the American people. But this type legislation undercuts that essential quality.

Mr. President, as just a final point. Some of the very things that are pointed to as being the greatest strengths of this bill are undercut by the specifics of the bill. It is said that we are going to have a more flexible, more productive highway system, that we are going to be encouraging people to compete on performance, not on process, that we will be challenging—the State of Virginia will stand proud and show what it can do with greater productivity with its highways vis-a-vis Pennsylvania because it has greater smarts, greater commitment, greater ingenuity.

That is wonderful if both teams line up with 11 players on the field, and the same number on the bench. But, Mr. President, just to pick two examples, it happens one of those is my own State. Recently my State of Florida passed the State of Pennsylvania in population to become the fourth largest State in the Nation. Pennsylvania is still the State which is closest to Florida in population.

Florida, of course, is a very rapidly growing State. Pennsylvania is a State with a long industrial-agricultural tradition. We want to be able to compete with Pennsylvania and show that we can use public funds as effectively as Pennsylvania, and be able to do some of the things that this flexibility will allow us to do, to make our highways more effective, to enhance our public transit system.

Mr. President, under this bill, Pennsylvania will receive $5.663 billion. Florida, with the larger population, will get $4.637 billion. So we are going to be out competing with Pennsylvania with approximately $1 billion less money to be able to use to do all those good things that the flexibility is going to allow us to do.

So when we line up here 6 years from now and say who was the smartest, who was the most ingenious, who made the greatest contribution to innovation, I think I already pointed out that some of us are playing with only nine players on our team, and others were playing with a full 11.

Mr. President, for the Senator from Arizona and elsewhere, I am about to conclude my remarks. I wish I had not had to speak at such length. And, frankly, if there had been earlier opportunities for more serious discussions of what is in this conference report, it would not, hopefully, have been necessary.

But let us look to the future. Where do we go from here? The next step is going to be, assuming that the Congress passes this bill, that the President will have to make a decision. One of my colleagues has already suggested that the President ought to look negatively on this bill. That is going to be his decision. But I think there are

some things that he ought to have in mind as he examines this bill.

Is this bill consistent with the pledge that he made to the American people in the summer of 1988 of "read my lips, no new taxes"? This bill contains a significant tax increase by extending for additional years a tax which is now scheduled to lapse and which, when it was adopted, was adopted on the premise that it was going to lapse.

Those are funds that many of us felt would have been picked up by the States when the Federal Government terminated its imposition of those taxes. We are now making the decision that we are going to levy that tax, we are going to demand of the American people that additional 2½ cents a gallon. We are not going to give an option for that to be used by officials at the State or local level.

The President ought to be concerned about fiscal prudence. Is this the way he thinks $150 billion of Federal funds ought to be spent? Is this the standard of the way in which the taxpayers' dollars should be used that he is willing to adopt as his own?

Finally, at the time when the President is apparently now concerned about economic stimulation, is this the bill that is going to do that? Or is it a bill that is going to divert money that could be used to put people to work immediately, into projects that are going to be building, projects of suspect worth over years into the future? Those are some questions I think the President ought to have in mind.

Second, I think there are some things we ought to have in mind. I hope we will come back here in December, because I cannot conceive of Congress going home for what will be perceived as a 2-month vacation, although I strongly dissent from that characterization. I do not see how we can, in a time of so much turmoil and distress, at a time when the American people are looking for leadership somewhere, absent ourselves from that stage.

I hope that when we do come back next month, we will relook at the issue of how transportation can play a key role as a stimulus. If we were to divert some of these funds that we currently have targeted for suspect project into an accelerated interstate program, we could put 250,000 people to work in the next 6 months. Would that not be a contribution we can make? That is the kind of opportunity we have, which we are about, at least for today, to decide to forgo.

Mr. President, there is some good, some suspect, much missed opportunity, and contribution to further erosion of public confidence in our ability to do our work. I am sad that we have reached this point, and I will have to vote against this bill.

I do so in the hopes that this experience will have some redemption in terms of the lessons that it will teach us, and that we will not be back here 6 years from now, maybe again dragging the 1980 census into the 21st century, that we will in the interim be involving, as they are asking to be involved, the public of America and the professionals of America, to help us in constructing a transportation system that will be worthy of this body, worthy of this Nation, and worthy of our contribution to the 21st century. Thank you.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, my intent here is to make a few brief comments and get some material in the RECORD, get some additional information, if I can, from the managers of the bill. I believe Senator MOYNIHAN is within earshot, and Senator SYMMS is on the floor. Perhaps between the two, they can given me the information that I will need.

Mr. President, the bill has a number of improvements, creative items. There is greater flexibility, less red tape. I congratulate the committee on really a vast number of improvements in the process which they have been able to accomplish.

The committee has worked hard. They have worked long, and even though there is a real problem left for many donor States, including my own, nonetheless, they have made some improvements from the perspective of many donor States, and we are grateful for those improvements.

The questions that I have I have tried to discuss with the staff of Senator MOYNIHAN. I think we can go through them very briefly to try to save some time. I have three charts, and I ask unanimous consent that they be printed in the RECORD at this point.

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

TECHNICAL ASSISTANCE FOR CONFERENCE COMMITTEE—SUMMARY OF ESTIMATED APPORTIONMENTS OF FISCAL YEAR 1992–97 WITH NHS AND SURFACE TRANSPORTATION PROGRAM DISTRIBUTED USING FISCAL YEAR 1987–91 HISTORIC SHARE ADJUSTED TO 90 PERCENT MINIMUM ALLOCATION; ½ PERCENT MINIMUM INCLUDED IN CONGESTION/AIR QUALITY; HOLD HARMLESS PROVIDES EACH STATE AT LEAST ITS LOWER SHARE OF EITHER THE HOUSE OR SENATE BILLS

States	Interstate construction and substitution	Interstate maintenance	Bridge	NHS	Surface transportation program	90 percent minimum allocation	Federal lands	Bentsen minimum allocation	Congestion and air quality	Reimbursement	Hold harmless	Program total	Percent	90 percent of payments	Projects	Total	Percent
Alabama	51,408,000	324,228,599	342,046,110	387,140,265	440,602,492	95,733,200	5,882,652	103,195,392	35,400,000	20,000,000	68,014,448	1,873,651,158	1.74	59,766,096	133,329,627	2,066,746,881	1.80
Alaska	0	135,840,958	40,250,000	494,273,864	562,530,731	0	92,645,340	0	30,000,000	20,000,000	0	1,375,540,893	1.28	0	0	1,375,540,893	1.20
Arizona	0	372,465,724	40,250,000	296,604,212	337,563,842	192,849,368	320,279,352	0	66,000,000	20,000,000	(34,188,005)	1,611,824,493	1.49	0	31,919,587	1,643,744,079	1.43
Arkansas	0	181,534,238	211,119,300	233,905,327	266,206,539	216,254,652	10,159,260	63,550,701	30,000,000	20,000,000	60,635,864	1,293,365,881	1.20	13,149,179	328,784,682	1,635,299,742	1.42
California	751,138,988	1,673,746,044	524,149,990	2,154,081,426	2,451,549,813	1,015,420,192	120,773,076	448,829,544	835,800,000	216,800,000	0	10,192,289,073	9.45	0	334,703,047	10,526,992,120	9.17
Colorado	52,848,000	318,430,857	150,523,730	354,917,628	403,930,063	0	69,859,548	0	84,600,000	20,000,000	0	1,455,109,826	1.35	0	2,876,401	1,457,986,227	1.27
Connecticut	315,843,592	216,121,248	813,376,830	138,561,472	157,696,151	0	0	0	92,400,000	228,400,000	(40,759,422)	1,921,639,871	1.78	0	79,089,203	2,000,729,075	1.74
Delaware	0	85,000,000	45,973,550	125,407,303	142,725,454	0	0	0	30,000,000	28,000,000	(9,494,180)	447,612,119	0.41	0	0	447,612,119	0.39
District of Columbia	115,211,946	85,000,000	112,236,320	101,799,205	115,857,191	0	0	0	33,000,000	20,000,000	(12,111,199)	570,993,463	0.53	0	21,742,204	592,735,667	0.52
Florida	73,080,000	629,406,347	283,735,130	1,008,475,954	1,147,741,680	712,085,042	8,813,142	247,374,128	173,400,000	22,400,000	164,142,439	4,470,653,862	4.14	70,286,426	96,528,176	4,637,468,464	4.04
Georgia	158,544,054	602,184,213	317,009,000	625,061,677	711,379,718	367,695,527	3,166,674	181,727,941	88,200,000	33,600,000	120,819,491	3,209,388,295	2.97	67,883,836	77,547,815	3,354,819,946	2.92
Hawaii	159,192,000	85,000,000	43,518,300	130,959,582	149,044,476	0	0	0	30,000,000	20,000,000	0	617,714,358	0.57	0	0	617,714,358	0.54
Idaho	0	152,353,123	40,250,000	194,306,406	221,139,195	0	83,395,032	0	30,000,000	20,000,000	0	741,443,756	0.69	0	67,397,203	808,840,959	0.70
Illinois	0	592,955,564	465,576,580	921,398,422	1,048,639,156	208,633,072	1,482,996	213,674,597	300,000,000	344,800,000	(85,090,832)	4,012,061,555	3.72	0	437,771,509	4,449,833,064	3.88
Indiana	8,449,595	374,884,606	269,615,430	492,126,938	560,087,324	327,472,540	1,027,878	134,069,363	80,400,000	121,200,000	0	2,369,333,674	2.20	25,275,959	105,164,979	2,499,774,612	2.18
Iowa	0	245,489,565	295,837,500	318,083,069	362,008,827	0	676,134	0	30,000,000	20,000,000	73,607,550	1,345,702,645	1.25	0	110,660,236	1,456,362,881	1.27
Kansas	0	247,558,614	292,799,430	269,405,268	306,608,853	0	8,662,974	0	30,000,000	73,600,000	0	1,228,635,139	1.14	0	73,501,607	1,302,136,746	1.13
Kentucky	49,536,000	296,596,630	320,966,380	314,030,749	357,396,899	88,380,477	2,621,544	92,216,477	68,600,000	22,800,000	29,612,959	1,634,758,115	1.52	46,253,558	79,443,968	1,760,455,641	1.53
Louisiana	39,240,000	289,257,057	330,239,980	315,712,764	359,311,194	56,530,346	4,457,280	87,947,107	30,000,000	20,000,000	140,187,752	1,672,883,480	1.55	0	70,099,574	1,742,983,055	1.52
Maine	0	85,000,000	98,781,550	145,454,184	165,540,715	0	1,377,732	0	30,000,000	27,600,000	(11,501,584)	542,252,597	0.50	0	201,501,607	743,754,204	0.65
Maryland	325,983,962	283,007,196	198,656,290	347,122,672	395,058,660	0	0	0	160,800,000	111,600,000	0	1,822,228,780	1.69	0	104,267,219	1,926,495,999	1.68
Massachusetts	2,466,544,718	230,392,524	911,189,168	159,447,654	181,466,616	0	0	0	243,600,000	205,600,000	310,339,410	4,708,580,890	4.36	0	5,922,801	4,714,502,091	4.11
Michigan	74,160,000	562,406,581	354,750,620	594,137,305	676,184,837	282,062,089	13,243,002	155,821,688	156,000,000	165,600,000	0	3,034,366,122	2.81	0	122,213,185	3,156,579,307	2.75
Minnesota	67,680,000	326,861,207	202,256,250	388,175,982	441,781,236	0	32,027,670	0	89,480,000	20,000,000	131,898,353	1,700,080,698	1.58	0	244,896,838	1,944,977,536	1.69
Mississippi	0	206,401,926	227,637,900	252,125,081	286,942,355	29,341,431	9,449,892	57,176,904	30,000,000	20,000,000	122,838,054	1,241,913,543	1.15	0	33,966,907	1,275,880,458	1.11
Missouri	0	476,229,577	634,571,840	372,086,371	423,469,726	184,125,024	4,595,274	134,346,707	95,400,000	54,000,000	22,985,205	2,401,810,524	2.23	60,947,429	152,753,790	2,615,511,743	2.28
Montana	0	272,905,291	83,409,270	236,005,284	268,596,490	0	136,726,296	0	30,000,000	20,000,000	0	1,047,642,631	0.97	0	21,000,000	1,068,642,631	0.93
Nebraska	0	141,936,322	200,266,290	230,559,449	262,398,610	0	1,559,328	0	30,000,000	20,000,000	5,512,713	892,232,712	0.83	0	20,236,324	912,469,036	0.79
Nevada	0	151,924,732	40,250,000	189,152,346	215,273,384	0	48,427,758	0	30,000,000	20,000,000	0	695,028,220	0.64	0	93,273,048	788,301,268	0.69
New Hampshire	0	85,000,000	89,667,340	142,450,740	162,122,508	0	3,902,232	0	30,000,000	20,000,000	(11,073,482)	522,069,338	0.48	0	31,844,003	553,913,341	0.48
New Jersey	473,425,029	214,285,320	722,122,030	513,444,377	584,348,601	0	0	0	327,000,000	256,400,000	0	3,891,025,357	2.87	0	188,754,676	3,279,780,033	2.86
New Mexico	0	279,080,538	52,115,700	234,622,590	267,022,852	0	279,281,190	0	30,000,000	20,000,000	0	1,162,042,870	1.08	0	10,828,803	1,172,871,673	1.02
New York	379,906,509	589,995,743	1,610,000,000	964,579,444	1,097,783,272	0	690,222	0	593,400,000	675,200,000	(122,784,171)	5,788,771,019	5.37	0	356,505,532	6,145,276,550	5.35
North Carolina	106,416,000	320,178,219	324,735,390	622,865,938	708,880,759	270,849,224	15,689,016	140,762,399	103,200,000	26,000,000	217,664,325	2,857,241,270	2.65	0	147,086,424	3,004,327,694	2.62
North Dakota	0	133,864,051	58,172,520	181,838,354	206,940,259	0	33,674,874	0	30,000,000	20,000,000	0	664,482,058	0.62	0	73,943,803	738,425,861	0.64
Ohio	70,920,000	675,410,439	492,719,570	773,885,939	880,755,903	466,575,792	1,078,050	222,258,934	252,000,000	187,200,000	0	4,022,884,627	3.73	0	151,379,223	4,174,183,850	3.64
Oklahoma	0	235,970,258	344,071,490	285,830,574	325,302,415	94,939,254	82,398,636	3,081,704	30,000,000	66,400,000	58,992,931	1,526,987,262	1.42	0	29,474,646	1,556,461,988	1.36
Oregon	93,978,884	256,952,579	93,322,040	285,887,271	325,366,941	0	139,732,062	0	51,600,000	56,800,000	56,728,545	1,360,368,322	1.26	0	46,022,409	1,406,390,731	1.23
Pennsylvania	858,960,000	426,099,381	1,451,294,250	620,621,316	706,326,165	0	2,839,200	0	405,000,000	257,200,000	0	4,728,340,312	4.38	0	934,783,793	5,663,124,105	4.93
Rhode Island	127,764,740	85,000,000	40,250,000	129,853,961	147,786,174	0	0	0	34,800,000	20,000,000	2,341,143	587,796,018	0.54	0	57,384,001	645,180,019	0.56
South Carolina	46,152,000	287,576,730	125,082,510	345,195,426	392,865,270	142,905,738	3,066,570	85,980,474	30,000,000	20,000,000	37,954,318	1,516,779,836	1.41	61,587,105	54,688,005	1,633,054,146	1.42
South Dakota	0	164,552,678	76,842,088	188,420,907	214,440,938	0	75,821,316	0	30,000,000	20,000,000	0	770,077,919	0.71	0	23,451,125	793,529,044	0.69
Tennessee	59,823,983	434,785,651	410,442,130	408,040,141	464,388,541	85,685,092	3,990,672	119,842,847	97,200,000	20,000,000	136,975,717	2,241,174,774	2.88	0	60,209,832	2,301,384,606	2.00
Texas	153,216,000	1,276,268,575	609,869,610	1,606,376,578	1,828,209,535	296,102,670	4,039,458	379,460,942	561,000,000	145,600,000	0	6,860,143,368	6.36	0	269,958,654	7,130,102,022	6.21
Utah	0	273,314,555	40,258,000	198,755,658	226,202,867	0	26,619,702	0	42,000,000	20,000,000	0	827,142,782	0.77	0	10,828,803	837,971,585	0.73
Vermont	0	85,619,630	90,063,400	119,231,367	135,696,651	0	1,400,118	0	30,000,000	20,000,000	(10,011,467)	471,999,699	0.44	0	20,000,000	491,999,699	0.43
Virginia	340,848,000	485,943,212	361,747,680	401,953,020	457,460,817	40,854,801	9,545,880	129,284,719	108,000,000	80,400,000	34,892,287	2,450,930,416	2.27	9,853,299	155,350,239	2,616,133,954	2.28
Washington	395,136,000	372,926,658	399,705,040	281,191,007	320,022,146	0	112,655,604	0	99,600,000	52,000,000	188,226,012	2,222,262,467	2.86	0	129,337,618	2,351,600,084	2.05
West Virginia	0	139,564,104	447,047,090	173,179,170	197,094,389	0	4,486,170	0	30,000,000	20,000,000	0	1,011,370,923	0.94	0	311,603,230	1,322,974,153	1.15
Wisconsin	344,592,000	231,970,072	275,281,020	375,967,738	427,087,093	0	22,392,600	0	70,200,000	20,000,000	64,577,397	1,832,867,920	1.70	0	350,522,800	2,183,390,720	1.90
Wyoming	0	215,602,864	40,250,000	183,588,852	208,941,599	0	45,072,768	0	30,000,000	20,000,000	(15,441,730)	728,014,353	0.67	0	20,000,000	748,014,353	0.65
Total	8,160,000,000	17,000,000,000	16,100,000,000	21,000,000,000	23,900,000,000	5,174,496,331	1,850,100,000	3,000,602,568	6,000,000,000	4,000,000,000	1,700,000,000	107,885,198,899	100.00	415,082,885	6,484,548,353	114,784,750,138	100.00

RATIO—PERCENT OF APPORTIONMENTS TO PERCENT OF PAYMENTS

State	Fiscal year 1987–91 apportionments/allocations	Senate bill	House bill	Conference report
Alabama	106.28	83.23	89.19	86.21
Alaska	530.58	613.27	338.75	535.74
Arizona	82.28	95.40	87.18	90.76
Arkansas	75.54	85.02	101.28	100.94
California	77.97	84.11	86.63	84.08
Colorado	138.53	130.51	93.97	108.58
Connecticut	238.32	158.65	134.81	152.43
Delaware	121.61	140.85	130.76	133.47
District of Columbia	478.98	375.63	337.61	360.04
Florida	74.27	84.56	87.48	82.36
Georgia	75.95	84.11	87.06	82.55
Hawaii	523.38	208.47	222.10	210.96
Idaho	177.99	181.20	111.41	160.98
Illinois	90.50	83.70	88.52	94.10
Indiana	78.60	84.26	87.26	84.19
Iowa	114.75	107.92	100.75	101.53
Kansas	85.80	89.49	102.63	92.02
Kentucky	76.21	83.53	86.02	84.46
Louisiana	102.47	90.02	86.74	85.82
Maine	83.44	89.56	90.96	115.81
Maryland	139.05	91.99	92.66	92.02
Massachusetts	241.00	226.38	226.45	212.83
Michigan	80.21	83.81	87.71	84.95
Minnesota	112.91	94.19	96.45	101.18
Mississippi	77.14	92.48	88.81	87.13
Missouri	77.23	83.76	89.18	85.65
Montana	170.94	243.09	118.87	203.74
Nebraska	108.08	148.79	115.16	113.65
Nevada	105.97	114.30	88.49	119.40
New Hampshire	109.06	118.06	107.35	118.42
New Jersey	103.53	94.94	105.91	102.29
New Mexico	101.11	151.16	86.92	133.47
New York	113.74	110.93	114.75	118.77
North Carolina	78.86	88.82	87.40	87.37
North Dakota	161.98	188.54	153.18	189.21
Ohio	79.05	84.08	87.28	85.03
Oklahoma	82.89	86.56	89.72	82.84
Oregon	81.37	97.15	92.55	91.53
Pennsylvania	104.37	98.88	124.43	114.03
Rhode Island	251.12	211.86	169.63	181.68
South Carolina	83.66	82.54	84.71	83.44
South Dakota	166.21	212.17	145.45	194.04
Tennessee	79.14	87.70	87.27	84.55
Texas	82.83	84.46	87.44	84.59
Utah	129.34	126.84	87.01	102.26
Vermont	186.87	173.08	171.17	177.27
Virginia	79.22	85.55	88.23	85.74
Washington	135.94	108.18	105.16	105.89
West Virginia	120.02	149.45	126.31	144.94
Wisconsin	77.89	87.81	110.97	98.22
Wyoming	124.58	138.59	89.38	135.28

RETURN ON DOLLARS PAID INTO THE HIGHWAY ACCOUNT

State	Fiscal year 1987–91 apportionments/allocations	Conference report
Alabama	1.10	0.96
Alaska	5.49	5.98
Arizona	.85	1.01
Arkansas	.78	1.13
California	.81	.94
Colorado	1.43	1.21
Connecticut	2.47	1.70
Delaware	1.26	1.49
District of Columbia	4.96	4.02
Florida	.77	.92
Georgia	.79	.92
Hawaii	5.42	2.35
Idaho	1.84	1.80
Illinois	.94	1.05
Indiana	.81	.94
Iowa	1.19	1.13
Kansas	.89	1.03
Kentucky	.79	.94
Louisiana	1.06	.96
Maine	.86	1.29
Maryland	1.44	1.03
Massachusetts	2.50	2.38
Michigan	.83	.95
Minnesota	1.17	1.13
Mississippi	.80	.97
Missouri	.80	.96
Montana	1.77	2.27
Nebraska	1.12	1.27
Nevada	1.10	1.33
New Hampshire	1.13	1.32
New Jersey	1.07	1.14
New Mexico	1.05	1.49
New York	1.18	1.33
North Carolina	.82	.98
North Dakota	1.68	2.11
Ohio	.82	.95
Oklahoma	.86	.92
Oregon	.84	1.02
Pennsylvania	1.08	1.27
Rhode Island	2.60	2.03
South Carolina	.87	.93
South Dakota	1.72	2.17

RETURN ON DOLLARS PAID INTO THE HIGHWAY ACCOUNT—Continued

State	Fiscal year 1987–91 apportionments/allocations	Conference report
Tennessee	.82	.94
Texas	.86	.94
Utah	1.34	1.14
Vermont	1.93	1.98
Virginia	.82	.96
Washington	1.41	1.18
West Virginia	1.24	1.62
Wisconsin	.81	1.10
Wyoming	1.29	

Note.—Both columns include interstate construction and substitution, which vary greatly from State to State.

Reductions:	
Illinois	$50.0
Pennsylvania	50.0
Arkansas	12.0
Maine	15.0
New York	50.0
Total	177.0
Increases:	
Georgia	35.5
Oklahoma	58.8
Florida	82.7
Total	177.0

Mr. LEVIN. The first chart is entitled "Technical Assistance for Conference Committee," dated November 26, 1991, 3:16 a.m., which shows how hard the committee and staff have been working. That, as I understand it, is the best information available, except for——

Mr. MOYNIHAN. Mr. President, may I respectfully request that the Senate be in order? The Senator from Michigan has waited with great patience for this colloquy, and it needs to be carefully heard and clearly reported.

The PRESIDING OFFICER. The Senator retains the floor.

Mr. LEVIN. Mr. President, except for some modifications which were made last night, and I will make reference to them, entitled "Demonstration Projects Changes," this chart that I have just identified represents the best of our knowledge as to what is in the report State-by-State; is that correct?

Mr. MOYNIHAN. The Senator from Michigan is correct.

Mr. LEVIN. The fourth chart, Mr. President, entitled "Demonstration Projects Changes," is a modification to the chart entitled "November 26, 1991, 3:16 a.m.," as well as to the other two charts, entitled "Ratio—Percent of Apportionments to Percent of Payments;" and "Return on Dollars Paid Into the Highway Account."

I would like to inquire of the manager, our good friend from New York; I understand that the transit funding distribution by State is not available at this time?

Mr. MOYNIHAN. The answer is that it is implicit, of course, in the statute, but the charts are not available. The Senator is correct.

Mr. LEVIN. So that we are not able to determine how much each State gets at this point, right at this time; the Senator could not tell us how much each State will be getting in mass transit money?

Mr. MOYNIHAN. From the chart, no, sir. The formulas are there, and the result is implicit in the formula.

Mr. LEVIN. But the Senator is not able to tell us what that works out to.

Mr. MOYNIHAN. No.

Mr. LEVIN. I understand there is a total amount of mass transit money of $31 billion, and 58 percent of that is trust fund money.

Mr. MOYNIHAN. Yes, that is the case.

Mr. LEVIN. The next question is that the so-called Bentsen funding, I understand, is not contingent on full funding of other portions of the bill?

Mr. MOYNIHAN. The Senator is correct.

Mr. LEVIN. I also understand that the 90 percent minimum allocation is not reduced by demonstration project funding.

Mr. MOYNIHAN. That is correct.

Mr. LEVIN. On the first chart, the November 26, 1991 chart, time 3:16 a.m., which shows a reimbursement column, I understand that the principle behind that column is that a number of States had spent some money on interstate prior to the funding being available, and this is intended to be reimbursement principally for those States?

Mr. MOYNIHAN. The Senator is correct. We are following precisely a table prepared by the then Bureau of Public Roads in 1958, pursuant to instructions, to a provision of the 1956 statute. All States are entitled to some reimbursement, the Northeastern States more than others.

Mr. LEVIN. Is that true, though, even though those States did not expend money in some cases?

Mr. MOYNIHAN. It is simply the historical fact that States did contribute something, sometimes merely right of way, but the 1958 report so indicates, and we have provided a minimum for those States that provided very little.

Mr. LEVIN. Is it not true that every State is guaranteed $20 million, even though there may not have been an expenditure of $20 million?

Mr. MOYNIHAN. The Senator is exactly correct.

Mr. President, I ask unanimous consent to print the original table in the RECORD at this point so that will be clear as well.

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

States	Original cost in millions	Reimbursement percentage	Reimbursable amount in millions
Alabama	$9	0.50	$147
Alaska		.50	147
Arizona	20	.50	147
Arkansas	6	.50	147
California	298	5.42	1,591
Colorado	23	.50	147
Connecticut	314	5.71	1,676
Delaware	39	.71	209
Florida	31	.56	164
Georgia	46	.84	246
Hawaii		.50	147

States	Original cost in millions	Reimbursement percentage	Reimbursable amount in millions
Idaho	5	.50	147
Illinois	475	8.62	2,533
Indiana	167	3.03	892
Iowa	5	.50	147
Kansas	101	1.84	540
Kentucky	32	.57	169
Louisiana	22	.50	147
Maine	38	.69	204
Maryland	154	2.79	820
Massachusetts	283	5.14	1,511
Michigan	228	4.14	1,218
Minnesota	16	.50	147
Mississippi	6	.50	147
Missouri	74	1.35	396
Montana	5	.50	147
Nebraska	1	.50	147
Nevada	2	.50	147
New Hampshire	8	.50	147
New Jersey	353	6.41	1,882
New Mexico	8	.50	147
New York	929	16.88	4,960
North Carolina	36	.65	191
North Dakota	3	.50	147
Ohio	257	4.68	1,374
Oklahoma	91	1.66	486
Oregon	78	1.42	417
Pennsylvania	354	6.43	1,888
Rhode Island	12	.50	147
South Carolina	4	.50	147
South Dakota	5	.50	147
Tennessee	7	.50	147
Texas	200	3.64	1,069
Utah	6	.50	147
Vermont	1	.50	147
Virginia	111	2.01	591
Washington	73	1.32	389
West Virginia	5	.50	147
Wisconsin	8	.50	147
Wyoming	9	.50	147
D.C	9	.50	147
Total	4,967	100.00	29,384

Mr. MOYNIHAN. The State of Michigan is entitled, under this, to $1.2 billion. The Senator's State is owed $1.2 billion and it is under the clear understanding that President Eisenhower had, Congress had, General Clay, specifically provided this in his report.

Mr. LEVIN. Was there a guarantee of one-half of 1 percent in that original commitment?

Mr. MOYNIHAN. No. That was the judgment of the conferees that——

Mr. LEVIN. That States would get a minimum of $20 million, whether or not they had expended $20 million?

Mr. MOYNIHAN. That is correct.

Mr. LEVIN. Just two other quick questions. As I understand it, on the column entitled "Projects," there is more money per projects by about $200 million in the conference report than existed in the House bill.

Mr. MOYNIHAN. The Senator is correct, approximately $200 million.

Mr. LEVIN. It is my understanding, also, that is above the amount which was allocated for Wisconsin because of a computer error?

Mr. MOYNIHAN. That is correct.

Mr. LEVIN. My last question is that some of the money in the "Projects" column, as far as we know, is not earmarked for specific projects but is simply cash which is put into that column later to be earmarked. I am wondering if the Senator could tell me approximately how much of that total represents unearmarked money.

Mr. MOYNIHAN. That is again the principle that there is a minimum for everyone. Some States, for example, the State of Wisconsin, in the House bill, had no project, it being the principle of their State government, they did not want any; they, nonetheless, got their minimum, not much, and, of course, all projects have to be matched by State funds.

Mr. LEVIN. Can the Senator from New York tell us how much money in the "Projects" column is not earmarked for a specific project?

Mr. MOYNIHAN. We have not done those out.

Mr. LEVIN. But there is some money.

Mr. MOYNIHAN. Yes, there is, and there is an obligation after 35 years the U.S. Congress records the fact that the State of Michigan is entitled to $1.2 billion. Let us not be vague—$1.218 billion.

Mr. LEVIN. I thank the Chair.

I again thank my friends from New York and Idaho and the other members of the committee for their courtesies. They have been consistently courteous to those of us particularly from donor States, and I must say this in conclusion: a number of us have improved our position. There is still a basic inequity, but a number of us, including Michigan, have improved our position. We appreciate that. We appreciate the response to our efforts of the 23 donor States that are shown as donor States by percentage basis on the chart entitled "Ratio-Percent of Apportionments to Percent of Payments." Of the 23 donor States, 20 have historically been donor States.

So there has not been a major change in the historic patterns as to which States are donors and which States are donees. The change that I do appreciate is that we, at least in my State of Michigan, have improved somewhat our negative position, and again we thank the Senator and our good friend from Idaho, and may I say he will not be with us next year and——

Mr. MOYNIHAN. He will be with us next year.

Mr. LEVIN. Next year he will, but next Congress he will not be with us. We worked together well. I not only appreciate my friend from New York, but my friend from Idaho more for the courtesies.

Mr. SYMMS. I thank my colleague.

The PRESIDING OFFICER. The Chair recognizes the majority leader, Senator MITCHELL.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. I now propound a unanimous-consent request which I am advised has been cleared by the Republican leader.

I ask unanimous consent that if the Senate fails to invoke cloture on the crime conference report, that the conference report be displaced, and there then be 30 minutes of debate on the subject of the crime conference report, equally divided between Senators BIDEN and THURMOND, and that upon the conclusion or yielding back of that time, the Senate proceed to the conference report on S. 543, the banking bill.

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

Mr. MITCHELL. Mr. President, I thank my colleagues, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, there has been a lot of debate about this bill. I simply commend the managers of the bill. This is a tough bill. It is not easy. It took about $151 billion. You are talking about diverse needs. You are talking about mass transit needs. You do not need mass transit in certain areas of the country. But in other areas if you have to build a road or bridge, the cost is incredible, the cost of building and maintaining, whether in Alaska or the long stretches out in the West.

Let us understand that. Let us not practice the kind of fraticide that is going to bring great problems, I think, to this institution and to what our form of government is about. I have to tell you, I want to compliment Senator MOYNIHAN and the managers of this bill for attempting to balance the needs and recognize the political reality. All of sudden some people say "Oh, it is pork. It starts out as a piglet. The piglet becomes the pork." Let me tell you something. Let us understand what the body is about. There are people who say you want to be our Congressmen and Senators. What do you do to meet the special needs?

I think this has been an attempt to balance it. Perfect? Of course not. It is difficult. It is tough. There are always needs that are unfulfilled.

Again, we begin to talk about what committee does what and where and how, you know, better take a look and see. This operates that way in other committees as well—Defense and others.

So I am not going to continue on. I am going to say that this was an attempt to meet the diverse needs of this Nation, and let me tell you this: What we should have done is passed this bill 6 months ago—5 months ago. I understand there is about 17 billion dollars' worth of highway and bridge construction infrastructure that is desperately needed and is going to put Americans to work at the same time. That is the kind of things we need. So you can pick a $151 billion project; my gosh, of course there is room to say how come here and there and how come not someplace else. Do Senators want to do that to a defense bill?

I challenge Senators to stand up and talk about it. I will tell Senators, tell them about how programs and projects are knocked out that should be kept on merit and others we continue to build things that the military says we do not need, we do not want, do not do it, but

it comes from somebody's own State and that is why. Let us not kid ourselves here.

I commend the managers of this bill and I say we would have had it out of here a long time ago if this Senate had its way. We would have passed this bill in June if it were not for the fact our colleagues on the other side kept us down to the last minute. We would have had numbers for Senators to run out and each could have done adjustments a lot earlier that can and should be done.

I commend my senior Senator for having done a heck of job in attempting to balance the realities of real life.

Mr. President, I rise today to congratulate my colleagues for the diligent and bipartisan efforts that have led to the completion of the historic Intermodal Surface Transportation Efficiency Act and as part of this legislation the Federal Transit Act Amendments of 1991.

I particularly commend my colleague from New York, Senator MOYNIHAN for his staunch commitment in creating a bold and innovative new direction in reauthorizing our surface transportation programs for the next 6 years.

I also want to thank my colleague Senator CRANSTON for his commitment to maintaining and strengthening Federal transit programs. The excellent Banking Committee staff deserves all our thanks. They include: Don Campbell, Eileen Gallagher, Kris Warren, and Jeanine Jacokes as well as my own staff of Anne Miano and Pam Ray Strunk.

Mr. President, this legislation provides $119 billion for highway and $32 billion in transit funding. Federal spending on highways and transit is a critical investment for our Nation. It maintains and strengthens our infrastructure, creates hundreds of thousands of jobs, and is essential to America's competitive position in the world.

This bill will prove to be a key component in jump starting the frozen economy of the Northeast, particularly New York State. It will literally get us moving again while helping to rebuild crumbling infrastructure. It will support 52,800 construction related jobs in New York and create nearly 320,000 new jobs in New York over the next 6 years—4 million jobs nationwide.

New York's highways and transit infrastructure are in dire needs of the shot in the arm that the billions of new dollars in this bill will provide. Our crumbling highways and bridges and aging mass transit systems need these dollars now. This bill brings home the bacon, not the bologna, for New York as well as other States with great infrastructure needs.

We have renewed America's commitment to safe and efficient mass transit systems by doubling transit funding from $16 billion over the last 5 years to $32 billion over the 6-year life of this bill. New York will get nearly a 100-percent increase in transit funding.

This bill preserves operating aid for large and small transit grantees and even permits inflationary adjustments. This means a continued $120 million a year to New York State and $720 million over the 6-year bill—MTA = $95 million a year; Buffalo = $6 million a year; other NY systems = $19 million a year.

The bill before us today places a greater emphasis on formula funding rather than previous years' discretionary funding in a broad attempt to stabilize Federal contributions to local transit agencies. This means a steady 35-percent share of the new rail modernization formula for New York City MTA providing $210 million in fiscal year 1992 increasing to $410 million in fiscal year 1997—$1.7 billion over 6 years. This is an increase of $1 billion over the last 5-year authorization. For the first time, the Buffalo transit system will share in this program. They will receive rail mod funds starting at $475,000 this fiscal year and rising to $1.1 million in fiscal year 1997—$4.4 million over 6 years.

This legislation includes $327 million in new starts project funds for New York State. It will provide $306 million to build the Queens connection to the 63d Street tunnel—probably the Nation's most cost effective new start transit project. It will increase ridership twelvefold.

Also, provided is: $12 million for two new Staten Island ferries providing new service to midtown Manhattan; $2 million for a metro bus center in Buffalo; $2.7 million for Staten Island ferry operating aid; and $4 million for operating aid to provide transportation services during the Buffalo World University transportation services.

Formula funds for New York for routine capital needs total $2.5 billion over 6 years. This is an increase of $1.4 billion in new formula funds over the life of the bill.

Funding for rural transit systems and elderly and handicapped programs would nearly double under this legislation.

We have also placed our transit systems on a level playing field with other forms of transportation. The creation of one 80/20 Federal/State match for both highway and transit projects will mean future transit projects will not be at a disadvantage when competing with highway projects.

Mr. President, again, I want to thank my colleagues who have worked so hard to bring us to this point. This is good for New York State and good for America.

Mr. MOYNIHAN. Mr. President, I thank my colleague my friend, and a friend of anybody who rides the subways in New York City or anywhere else in the country.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska, Mr. MURKOWSKI.

Mr. MURKOWSKI. Mr. President, I thank the Chair.

Mr. President, I would like to thank my colleague from New York and my colleague from Idaho for the leadership and patience they displayed in crafting the highway bill that Congress is on the verge of passing. Enactment of his conference report is truly a must pass piece of legislation.

FUNDING FOR ALASKA

From the standpoint of my State, Mr. President, Alaska fared very well. As you know, transportation infrastructure is the cornerstone of a healthy economy, and this legislation will do much to promote the economic health of the Nation and of my State as well.

I am pleased to report that Alaska will be receiving $1.375 billion over the next 6 years, an average of $229 million per year, from the $151 billion total contained in this bill. This represents an increase over previous funding much needed in our State.

Mr. President, I think it is important that my colleagues understand why this funding level is warranted in Alaska and other Western States.

Unlike many of my colleagues from developed States, Alaska is a young State and a relative newcomer to the Union, 37 years. We do not have a sophisticated Federal Interstate Highway System—in fact, we have no true interstate system at all because Alaska is a noncontiguous State. On top of that, Alaska has a land mass that is fully one-fifth the size of the lower 48. Our transportation needs are great and our costs are even greater.

Mr. President, Western States are not attempting to get an advantage on other States. We simply want to have the same opportunities to develop the infrastructure and economic potential of our States that other States have already enjoyed for an extended period of time. This legislation will help us catch up.

Mr. President, this conference report contains several other provisions that are important for Alaska. The final report includes two amendments which this Senator offered when the Senate first considered this legislation.

ALASKA MARINE HIGHWAY

The first proviso permits the State to use Federal funds for the Alaska Marine Highway System in the same manner as it uses funds for other highways. Much of Alaska is made up of islands—the Alexander Archipelago in southeast Alaska and the Aleutian Island Peninsula in the southwest. All told, Alaska has more than 47,000 miles of coastline. The Alaska Marine Highway connects most of the small towns and villages along this coast line to the rest of Alaska. For many in Alaska, the Alaska Marine Highway is the only highway for many of the small villages and towns in coastal Alaska.

ALCAN HIGHWAY

The second amendment contained in this conference report restores authorization for the construction and maintenance of the Alaska Highway in Canada. Up north we refer to this highway as the Alcan, and this year represents the 50th anniversary of this highway's establishment. The Alaska Highway serves as a strategic transportation corridor between the lower 48 and defense installations in Alaska. The Alcan is the only land route available for transferring military goods and equipment to bases in Alaska.

Mr. President, I am pleased to report that this legislation also contains an important provision sponsored by the senior Senator from Alaska with regard to the Alcan. Under this provision, funds can be provided from the Defense Highway System for reconstruction and maintenance of the Alcan. The legislation authorizes funding for this purpose of up to $20 million per year.

CONCLUSION

Mr. President, there are many other provisions in this legislation that are important to the Nation and my State. Ferry maintenance funding and mass transportation programs are but two examples. All told, passage of this legislation is a great success and I encourage its adoption by my colleagues.

Mr. SYMMS addressed the chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I thank my colleagues from Alaska for his statement.

THE AVENUE OF THE SAINTS

Mr. GRASSLEY. Mr. President, I would appreciate the opportunity to join in a colloquy with my esteemed colleague from the State of Idaho, Senator SYMMS, regarding a transportation corridor of great importance to the Midwest, the Avenue of the Saints. The Avenue of the Saints is a four-lane highway corridor that will connect St. Louis, MO, and St. Paul, MN.

Mr. SYMMS. Mr. President, I would be pleased to accommodate the Senator from Iowa.

Mr. GRASSLEY. Let me begin by complimenting my friend from Idaho for his bold leadership as the ranking member of the Water Resource, Transportation and Infrastructure Subcommittee of the Senate Committee on Environment and Public Works. I commend him for his efforts.

Contained in this legislation are numerous items which are especially important to the Avenue of the Saints. First is the National Highway System of which the Avenue of the Saints is part. Also, there is a demonstration project of approximately $120 million for the Avenue of the Saints. And finally, there is considerable flexibility built into this bill which will allow the Iowa Department of Transportation to commit the dollars necessary to make the Avenue of the Saints a reality by the end of this decade.

I would inquire of my colleague, as the ranking member of the committee which produced this bill, whether he agrees with my assessment of the bill and its impact, the Avenue of the Saints.

Mr. SYMMS. I would like to say to the Senator from Iowa that I agree with his assessment. This legislation is a good bill that will directly impact the Avenue of the Saints. It will make it easier to complete this important corridor project.

I would also like to take this opportunity to commend the Senator from Iowa, Mr. GRASSLEY, for his tenacity in fighting for the Avenue of the Saints. Senator GRASSLEY and I have had many conversations about the importance of this project to the State of Iowa. No one has been more determined to make sure that this legislation was good for his State. When the Avenue of the Saints is completed at the end of this decade, the Senator from Iowa will get considerable credit for this accomplishment.

Mr. GRASSLEY. I thank my friend for his kind words and cooperation.

Mr. SYMMS. First and foremost, I am proud that the conference report before us is, in every important respect, virtually the same bill the Senate passed on a 91-to-7 vote last June.

The program structure—which places top priority on the preservation of our Interstate and Defense Highway System, establishes a new Surface Transportation Program, sufficiently flexible to meet the varying regional and demographic needs of our States, and establishes a new Congestion Mitigation/Air Quality Program to help solve the most pressing transportation problems of our large urban areas. That program structure of the Senate bill remains intact and virtually unchanged here.

In addition, the distribution of program funds in this conference report, although not as favorable for most Western States as that of the Senate-passed bill, remains much closer to the State-by-State program shares of the Senate bill, than to the disastrous urban orientated formulas adopted by the House. I went into this conference knowing I could protect Idaho's share of the total program through one means or another, but I felt a real obligation to try my best to protect the Western State formulas of the Senate bill, and while we've given ground to the donor States, I believe we've left our Western States in a defensible position to begin neogitations on the next bill.

Apart from program structure and formulas, I am very pleased to report that this bill to be the largest surface transportation bill in history. If the Appropriations Committee provides obligation authority sufficient to fund fully the authorized amounts over 6 years, this bill will draw the cash balance in the highway trust fund down to about $2.5 billion, which is the cushion required to meet cash flow demands in the highway program.

In addition, I am pleased and proud that my colleagues in the Senate and among the conferees, both House and Senate, have given such strong, bipartisan support to my efforts to establish a National Recreational Trails Program. This program, funded from fuel taxes already being paid by offhighway vehicle users, will provide a steady, reliable funding source to help States build and maintain a trails system for both motorized and nonmotorized trail users.

Also, I am pleased to report that this bill contains the largest Federal Lands Highway Program ever. This program provides funds to support transportation infrastructure improvements on Indian reservations, national parks, and federally owned lands across the country. We have made what I consider to be an important change by combining the existing forest highways and public lands highways into one account that will bring the State transportation departments, the Forest Service, and the Federal Highway Administration to the table with their competing interests to establish transportation priorities on our public lands.

Also, I want to mention the program efficiencies section of Senate bill which we have modified but preserved intact in this conference report. The program efficiencies section was drafted in large part by our transportation department in Idaho, based on consultations with their counterparts in States across the country, to allow the States greater authority to administer the highway program without burdensome and costly Federal oversight. The conference agreement on program efficiencies provides that States may design and construct projects off the National Highway System according to their own State standards, and provides that States may approve those projects without Federal approval if they so choose.

Projects on the National Highway System must be designed and constructed in accordance with standards that meet or exceed standards set by AASHTO, but States may, on a project-by-project basis, approve the design of pavement rehabilitation projects on the NHS without Federal approval.

This streamlined approval process is of vital importance to my State and I believe it will lead to a more cost-effective and much more productive highway program.

Finally, I want to say how disappointed I am that the Private Property Rights Act, which the Senate passed by a 55-to-44 vote, is not included in the final conference report. I wish we could have held that impor-

tant measure in conference. But I want to say now, don't count us out. We'll be back.

Mr. CHAFEE. Mr. President, I want to congratulate the distinguished chairman of the Environment and Public Works Committee, Senator BURDICK, our distinguished subcommittee chairman on Water Resources, Transportation and Infrastructure, Senator MOYNIHAN and my distinguished colleague Senator SYMMS who is the ranking member of the subcommittee for the outstanding work they have done on the surface transportation bill.

The Intermodal Surface Transportation Efficiency Act of 1991 will bring major changes to the transportation program in this country. These are long overdue and very welcome. This bill contains enough money to complete the Interstate Highway System. But, the era of massive road building projects is over. This legislation signals a new era. The purpose of the transportation program is now the maintenance and more efficient use of the large capital investment this country has made in its transportation infrastrucure.

This bill has a number of provisions which will promote a better transportation system. First, it gives State and local officials flexibility to choose how to spend their transportation dollars. There are a variety of ways available to States in this bill to address their transportation problems. Approximately half the money this bill authorizes for the Federal aid highway program is available for transit projects. State and local officials will be able to choose between subway and light rail options, buses, HOV lanes, operational improvements to existing highways or additional lanes, for example. This legislation places all these choices on a level playing field which will encourage State and local officials to choose the best solution for their particular transportation problem.

Second, this bill recognizes the connection between transportation and the quality of our air. Transportation sources are a major contributor to this country's air quality problem, particularly in our major cities. This bill makes funds available to nonattainment areas specifically to address air quality problems. The Congestion Mitigation and Air Quality Program makes funds available to be used only on projects that will improve air quality. There are also major new planning provisions which require State and local officials to consider the effects of all transportation projects on air quality. The State's transportation improvement plan [TIP] must conform with its State implementation plan [SIP] under the Clean Air Act. Other innovative programs including a congestion pricing pilot program will provide us with more information and will move us towards meeting our air quality goals.

Third, this bill provides significant funds for research. Major new programs in the areas of magnetic levitation and intelligent vehicle highway systems are included. The potential for new technology advances are exciting both for transportation and other areas where this technology will provide benefits.

I am particularly pleased that this legislation includes safety belt and motorcycle helmet legislation which I introduced. This provision will encourage States to pass safety belt and motorcycle helmet laws. If they choose not to do so, States must spend additional money on safety activities. This will save lives and prevent serious injuries, and provide another benefit of saving this country money in medical costs.

This bill also contains a freeze on longer trucks. It is clear that the public's concern is growing over the bigger, heavier trucks using the highways. I was pleased to cosponsor with Senator LAUTENBERG the provision that put this freeze in place. Drivers of cars and trucks must share the highway but the equation is increasingly stacked against cars. It is time to stop increasing the size and weight of trucks and I am pleased that the conference bill adopts this freeze.

Mr. President, the surface transportation conference report that is being considered today contains provisions that require the use of rubberized asphalt in portions of the roadways that would be built with this legislation. Asphalt rubber pavement is our best bet to solve a significant environmental problem caused by the highway user. That problem is the accumulation of scrap tires in dumps all across the country.

SCRAP TIRE PROBLEM

Americans generate approximately 250 million scrap tires each year. That's about one scrap tire per year for each American.

Until the advent of the radial tire, most used tires were retreated or ground up and used to make new tires. Old tires were recycled into new tires. The radial design and the advent of inexpensive radial tire imports have limited the market for retreads and eliminated the possibility of reusing ground rubber to make new tires.

Retreading still consumes about 37 million tires, per year, mostly medium and heavy duty truck tires. Another 8 percent of the scrap tires are burned, 4 percent are exported, and 3 percent are recycled into various rubber products. But the other 180 million scrap tires generated each year are simply discarded. They are difficult to throw away. Landfills have become reluctant to take scrap tires because they "float" to the surface and create spaces for water infiltration and rodent habitat. Many States have passed laws prohibiting the disposal of scrap tires in municipal landfills.

Waste tires are now accumulating in large stockpiles and tire dumps. It is estimated that 2½ to 3 billion tires have accumulated in above ground stockpiles across the United States. Some of these stockpiles contain millions of tires. They present a serious threat of fire and disease.

Tire fires produce a toxic smoke and oily liquid residue. EPA received reports of 46 fires in 1987, 65 fires in 1988 and 87 fires in 1989 at tire stockpiles. Approximately 10 tire fires per year are considered major fires. A 1984 fire in Virginia burned for several months, was visible in seven States and cost $5.4 million to extinguish. Recently, the Northeast States watched with concern a similar fire just across the Canadian border.

Tire piles are also breeding grounds for encephalitis-carrying mosquitoes and rodents. Tires imported from the Far East brought the Asian tiger mosquito to the United States in the mid-1980's. It is now considered a serious health threat at tire storage sites. Eighty percent of the cases of Lacrose encephalitis reported in the United States are experienced by people living within 500 yards of a tire disposal site.

Several States have developed legislation directed at the waste tire problem. Approximately 31 States have tire disposal laws. A few States have begun efforts to burn, recycle, or dispose of existing tire stockpiles. The first and toughest law was enacted by Minnesota in 1984. So far, that State has disposed or recycled more than 5 million tires at a cost of slightly less than a dollar per tire. I am pleased to say that recently the State of Rhode Island adopted new regulations designed to reduce the fire and disease threat posed by these abandoned tire piles.

Scrap tires have a value. They contain more Btu's of energy per pound than most grades of coal and can be burned to produce electricity or as an industrial energy source. Many folks operating tire dumps are hoping higher energy prices in the future will give them a windfall for the scrap tires they have been storing. However, significant opposition to new waste combustion facilities has been evident in many communities across the country. Combustion now seems a less promising option to solve the scrap tire problem.

Tires may also be ground to a fine powder called crumb rubber and used in the manufacture of new rubber products. As I said, years ago this crumb rubber was used to manufacture new tires. But, tire manufacturers are concerned about the safety of radial tires made from recycled rubber. Congressional testimony from tire manufacturers indicates that only 1 percent of the rubber in new radial tires can be derived from recycled tires. Crumb rubber from tires can be used to make other rubber products, but 70 percent of all rubber produced in the United

States is used in tires. So, there is no current market for rubber products big enough to recycle this material, if it cannot be used in new tires.

One promising use for crumb rubber from scrap tires is asphalt pavement. Large quantities of asphalt are used in the United States each year. The United States uses 490 million tons of asphalt pavement to build highways, local roads, parking lots, airports, and other projects each year. About 40 percent of all asphalt produced is used in federally assisted highway projects. So, the highway program buys about 200 million tons of asphalt annually. If just a small portion of this pavement contained rubber from scrap tires, we could create a huge new market for the crumb rubber from recycled tires.

Tire rubber is being used in highway projects all across the Nation already. There are various processes for incorporating scrap tire material into asphalt. Generally, the tire is ground to a very fine powder and is heated and used to enhance the binder that holds the pavement together. A very small amount of rubber, 20 to 60 pounds per ton of finished pavement, is used to improve the performance of the asphalt. By improved performance, I mean that the roadway lasts longer, it does not crack and crumble as quickly when rubber is added to the binder.

Even considering the small amount of rubber included in a ton of pavement, a large number of scrap tires would be needed if asphalt rubber pavement was used to any significant extent. For instance, one process that uses 60 pounds of rubber per ton would consume 100 million scrap tires per year if it were used to build just 10 percent of our federally assisted roads.

California, Arizona, and other States have been experimenting with rubber additives to asphalt pavement for several years. California provided the following statement in written testimony to the Environment and Public Works Committee on the use of asphalt rubber pavement earlier this year:

Since 1978, California has been testing the use of rubber modified, dense-graded asphalt concrete which makes use of recycled tires—tires that have in the past caused difficult disposal problems and have threatened the environment.

Based on laboratory and field testing we have determined that rubberized asphalt concrete provides: better fatigue resistance than conventional asphalt concrete; better resistance to moisture which suggests that it will "weather" better than conventional asphalt concrete; better resistance to tire chain wear on the surface and better resistance to cracking from below than conventional asphalt concrete; and an alternative to land fill disposal of tires.

California has been so pleased with the use of rubberized asphalt concrete that we no longer consider its use experimental when used in thicknesses equal to conventional asphalt concrete and have asked FHWA to remove both dense-graded and open-graded asphalt from its experimental classification. We believe that broader use of the material will help reduce the country's "tire disposal problem" in a sound and environmentally sensitive manner. We would urge legislation that will increase the use of rubberized asphalt concrete."

Mr. President, the one significant issue that is still raised with respect to asphalt rubber pavement is the cost. It is somewhat more expensive than conventional asphalt. California indicates that in their experience rubberized asphalt costs about 45 percent more than conventional asphalt. They are quick to point out, however, that those costs are based on experimental projects. And that the gap is likely to be much smaller when asphalt rubber pavement begins to be used on a broader scale.

TIRE RECYCLING, ABATEMENT AND DISPOSAL ACT

Mr. President, the tire recycling provisions in this bill are taken in part from legislation which I introduced earlier this year. I introduced two bills on tire recycling. One bill, S. 1038, created a waste tire management program and included a provision to encourage the use of rubber from scrap tires in highway construction. The other bill, S. 1039, imposed a Federal tax on passenger car and truck tires and created a trust fund to receive revenue from the tax.

The waste tire management program that is contained in my legislation has three purposes. First, is to assure that scrap tires are managed in a way that reduces the risk of fire and the spread of disease. Second, the bill would require the elimination of waste tire dumps by the year 2000. It requires that the 3 billion tires in stockpiles across the country be recycled or burned or shredded and buried by the end of the decade. Third, the management program is intended to encourage markets for recycled material from tires.

This management program is written as an amendment to the Resource Conservation and Recovery Act * * * or RCRA as it is called. It is a traditional partnership program between EPA and the States with the expectation that the States will take the lead in implementation. It is my hope that the Environment and Public Works Committee will consider this waste tire management program as we reauthorize the RCRA. That legislation is pending before the committee and I know that the distinguished Senator from Montana, Senator BAUCUS, has every hope of bringing a RCRA reauthorization bill to the floor of the Senate next this year.

EXPLANATION OF THE CONFERENCE REPORT

Mr. President, I would now like to describe the provisions of the conference report entitled "Use of Recycled Paving Material." As I have said, this section of the conference report combines provisions from both the Senate and the House bills.

Subsection (a) is called a demonstration program and is taken principally from the House bill. It removes an impediment to the use of recycled rubber in asphalt pavement that is found in current regulations. Highway construction regulations prohibit the use of patented processes. Many of the existing processes for recycling rubber into asphalt and obtaining an improved pavement material are based on patented processes and thus they have not been eligible for approval for some highway projects. The conference report lifts this prohibition with respect to patented processes that produce asphalt pavement containing recycled rubber and provides that projects using these processes would be eligible for funding in the same manner as a project using unpatented processes. People in the highway pavement business tell us that this provision alone will create new recycled rubber demand that will consume up to 8 million tires per year.

Subsection (b) of this legislation requires the Environmental Protection Agency and the Department of Transportation to conduct several studies. The studies are intended to answer some questions about asphalt pavement containing recycled rubber that continue to be raised. The first concern is air pollution from the asphalt manufacturing process using rubber may present greater risks to the health of highway construction workers than emissions from conventional pavement processes. Tire rubber contains compounds like styrene and butadiene that are not present or not present to the same degree in petroleum based asphalt. These compounds may be emitted into the air when tire rubber is cooked to make asphalt. I would note that the Canadian Government has recently completed a study on air emissions from rubberized asphalt manufacture that indicates no additional risk.

The second concern is that asphalt pavement containing recycled rubber may not be recyclable. Much of the pavement removed from highways today is recycled. It is remixed and put back into roads. The question is whether asphalt made with some recycled rubber can itself be recycled to substantially the same degree as conventional pavement? We certainly wouldn't want to create an asphalt disposal problem by trying to solve our tire disposal problem. A recent test in France seems to indicate that recycling the asphalt is no bar to using this material.

The third concern is one for the performance of asphalt pavement containing rubber as a safe road surface. Do all processes from incorporating rubber in asphalt work equally well? Are there climate or weather conditions that interfere with the performance of rubberized asphalt?

I am convinced that none of these concerns is well founded. In fact, many studies and demonstration projects

using rubberized asphalt pavement addressing each of these questions have already been completed by private contractors, by State agencies, and by foreign nations. They show no additional environmental problems, full recycling potential and performance that is better than conventional asphalt pavements. But we included a study requirement in this bill to put these doubts to rest once and for all. This section will assure that the results of all of the studies that have already been done are pulled together and marshalled to firmly establish the benefits for the highway program that can be gained by using new construction materials like rubberized asphalt.

The Senate should know that appropriations for such as this study were included in the transportation appropriations bill that was enacted for fiscal year 1992. We would not expect that research be repeated where questions can be addressed adequately by existing studies. Further, we would expect that the Environmental Protection Agency would conduct the studies with respect to the environmental effects of asphalt pavement containing recycled rubber and would be a full partner with DOT on the study to determine whether asphalt pavement can be recycled.

With respect to the performance of asphalt pavement containing recycled rubber, I want to say that we are not looking for a cost-based evaluation here. Knowing something of the economics of asphalt pavement containing recycled rubber will be helpful, but it is a well-established fact that this special pavement will be somewhat more expensive than conventional pavements. The additional cost is attributable to the cost of grinding tires to crumb rubber consistency. Some portion of the cost differential may be bridged by the enhanced performance of asphalt that contains rubber. And some of the remaining differential may be closed, if the RCRA legislation that is enacted next year requires tipping fees to offset the costs of processing tires.

There are some working in the highway program who apparently believe that the only measure of success is the number of lane mile that get paved every year. Some have argued that fewer lane miles will get paved as the result of the tire recycling provisions in this bill. But all that highway out there is causing a substantial environmental problem. Three billion tires have piled up across the country and are now presenting fire and public health hazards. The highway program has a responsibility to contribute to the solution of that problem. I believe that we can build better highways that will last longer using recycled rubber as a binder in asphalt. If this paving material performs better than conventional pavement, we may actually save money and be able to pave even more miles of road.

However, that question turns out, asphalt pavement containing recycled rubber shall be deemed by the Secretary to meet the performance test, if processes can be identified that produce a pavement meeting highway specifications that would apply to conventional asphalt. It does not have to be better than conventional pavement. It does not have to be more cost-effective than conventional pavement. It may even be more expensive than conventional pavement on a life-cycle basis. All that is required to pass the test is that asphalt pavement containing recycled rubber meet the same minimum performance specifications that apply to conventional paving material.

It may be that only some of the processes tested can produce a rubberized asphalt meeting these specifications. Only those processes that can satisfy highway construction specs can be used by a State to meet the utilization requirements under subsection (d) which I will discuss in a moment.

A second part of these studies is to look into the use of other recycled materials in highway construction. This provision was taken principally from the House bill and was of special interest to Congressman MINETA. These other materials would include glass, plastic, and recycled asphalt.

Results of the studies required by this section are to be transmitted to the Congress within 18 months of the enactment of this legislation.

Subsection (c) is also taken principally from the House bill. It requires the Department of Transportation to issue guidance on the use of recycled materials in highway construction projects. With respect to asphalt pavement containing recycled rubber such guidance would be useful to the states prior to the time the utilization requirement is fully implemented.

Subsection (d) is taken from the Senate bill. It requires that each State use asphalt pavement containing recycled rubber in a portion of the highway projects completed in that State. It is a mandate. There is a sanction for States that fail to satisfy the requirements. But there is also considerable flexibility built into the provision, both for the States and for the Department of Transportation. Let me describe that flexibility.

First, the utilization requirement is phased in. It does not begin until 1994. It is not fully implemented until 1997. At that time and in each year thereafter, 20 percent of the pavement used in federally assisted highway projects should contain recycled rubber.

There are many different ways to state the minimum utilization requirement. We are fundamentally interested in how many pounds of recycled rubber are used in each State, not in the number of roads that have some rubber content. The utilization requirement is partly a function of how many pounds of rubber are added to each ton of pavement and partly a function of the portion of the pavement laid which must contain recycled rubber.

When I originally introduced my bill in the Senate, I proposed that 10 percent of the highway projects use pavement containing 60 pounds of rubber per ton. That is the largest amount of rubber per ton of hot mix pavement that is used in any process today. There is one specific process that reaches the 60 pound per ton ratio.

Unfortunately, folks got the impression we were mandating the use of that particular process. That is not true. The original bill contained a provision allowing States to modify the rubber content and pavement utilization requirements to any ratio they wished, just so long as highway projects in the State used as much rubber as they would if 10 percent of the pavement contained 60 pounds of rubber per ton of finished product. A State could use 6 pounds in 100 percent of the pavement, 30 pounds in 20 percent of the pavement, or 12 pounds in 50 percent of the pavement. All of those combinations would meet the minimum utilization requirement.

To stay away from the implication that we were endorsing a particular product, the Senate-passed bill contained an amendment of mine that stated the utilization requirement as 6 pounds of rubber per ton of pavement in 100 percent of the federally assisted projects. I don't know of any current process that uses 6 pounds per ton. Again, the States were authorized to change the components of that formula just so long as the same amount of recycled rubber was used in each year for highway projects.

I would point out that this level of utilization would consume about 100 million tires per year. That would be about 40 percent of the automobile tires that Americans discard annually. That we make a substantial dent in our growing tire problem.

A further consideration led us to make a further change and produced the formula that is in the conference report. The House conferees expressed concern with respect to the sanction that applies to States that do not meet the minimum utilization requirement. The sanction in the Senate-passed bill is loss of all Federal highway funds. That was too severe a sanction for the House. Loss of all funds for failure to use rubberized asphalt in only a percentage of the roads seemed draconian to our colleagues on the House side.

So, the Senate proposed that the sanction be tied to the utilization requirement and that the utilization requirement be restated as larger quantity of rubber in each ton of asphalt with a smaller portion of the highway projects covered. We settled on the formula which requires that 20 pounds of

rubber per ton of asphalt pavement be used in 20 percent of the highway projects. Failure to meet this requirement would lead to a loss of 20 percent of the funds that would otherwise be apportioned to the State under section 104 of the act.

Mr. President, there is a great deal of sense in the compromise that we have reached. As it happens, 20 pounds is approximately the amount of rubber that is used in the most cost-effective formulations of hot mix asphalt pavement. States that fail to meet the requirement will lose Federal funds only for that portion of their roads that might appropriately and most cost-effectively have used this material. And the utilization requirement is small enough that it can be met with a reasonable expansion of the tire processing industry over the timeframe we have laid out in the bill. The combinations of 20 pounds per ton in 20 percent of the pavement used in federally assisted projects will consume about 70 million tires per year.

Finally, the flexibility for the States to modify the formula has been retained provided that the combination of pounds per ton and tons of utilization consumes as much recycled rubber as would be used, if 20 percent of the pavement contained 20 pounds of recycled rubber per ton.

There is a phase in period—5 percent in 1994, 10 percent in 1995, and 15 percent in 1996. The sanction for a State failing to meet the requirement is lesser during the phase in years, as well.

Another aspect of the flexibility that we have provided is authorization for the States to substitute other recycled materials for recycled rubber to meet the utilization requirement, if the DOT and EPA studies indicate that the alternative material is equally suitable for highway construction. Up to 5 percent of the total tons of pavement laid in the State which contain other suitable recycled material may be counted against the minimum utilization requirement for rubberized asphalt. There is no specification of the pounds of recycled material that must be contained in each ton of asphalt to qualify for the substitution. The Secretary should specify such a standard based on the study conducted under subsection (b) in a manner that is consistent with the overall objective of this section.

I have already mentioned the provisions in this legislation that would allow the Secretary to set aside the utilization requirement, if the studies indicate that asphalt pavement containing recycled rubber is not appropriate for use in highways. There are three factors the Secretary may consider in setting aside the requirement—the environmental risks associated with this material, the recyclability of rubberized asphalt and the performance of the material. On the first two items, DOT must have concurrence from EPA before the requirement can be set aside.

Performance is to be determined on an objective basis. Are there asphalt pavements containing recycled rubber that can meet highway construction specifications? If the answer to that question is yes, and I believe that we already know the answer is yes, then the Secretary has no basis to set aside the utilization requirement using the third prong of this test.

If the Secretary should make a determination to set aside the requirement, that determination has a 3-year life. The utilization requirement comes into force again at the end of the 3-year period. During that time, the asphalt pavement industry may find ways to modify processes and products to meet the concerns which prompted the Secretary's determination, should there be such a determination. If the utilization requirement is set aside and then subsequently comes into force because problems have been solved, the phase-in period for the bill would be applicable. The schedule of 5 percent in the first year, 10 percent in the second year, 15 percent in the third year, and 20 percent in the fourth year would begin in 1997 or 2000 or whenever the set aside established by the Secretary expires and problems have been solved.

Adding to the flexibility provided in the bill, the Secretary may set aside the utilization requirements for only some States or regions of the country. It has been suggested by some that rubberized asphalt does not perform well in cold climates. I doubt that is true. In fact, it has been thoroughly tested in cold climates and performs quite well. But suppose it were true. In that circumstance, the Secretary might set aside the utilization requirement for cold climate areas until such time as processes and products were developed that could meet specifications that would apply to conventional asphalt.

Mr. President, we have provided one additional measure of flexibility in this legislation that was included to answer concerns from the very few States that have developed alternative means to solve their tire problems. Take Connecticut for example. That State has allowed a tire incineration facility to be built and to go into operation. It is expected that the Oxford Energy plant in Sterling, CT will burn all of the tires that are discarded in that State.

If that is the case, Connecticut believes that they should not have to recycle tire rubber into their highways. And there is a provision in the legislation that allows DOT to set aside the requirement for any State that can demonstrate that all of the tires in the State have been processed and that future discards are committed to some other recycling or processing use.

We don't mean disposal here. A State cannot meet this alternative utilization standard by landfilling their tires. And so-called embankment stabilization is just another word for landfilling, in my view. To the extent that a State proposes to substitute a use that is not materially different from disposal, the Secretary cannot approve the alternative as processing or recycling. I must also emphasize that the State must show that there are no tires available for utilization in asphalt pavement containing recycled rubber. We are not talking here about a credit system where a State can avoid the requirement by burning an equivalent amount of tires. The recycling and processing uses must consume nearly all of the tires in the State to have an impact on the pavement requirement.

Using the national figures, if this bill would consume about 70 million tires per year that would be about 30 percent of the tires discarded. Assuming that same percentage would apply in a State and that the State has no tire stockpile remaining from previous years, then a State would have to show that more than 70 percent of its tires would be consumed in other recycling and processing uses, not including uses that are equivalent to disposal, before its utilization requirement would be modified under this provision.

Mr. President, this bill does not require that the rubber used in a State's roads actually come from tires discarded in that State. The crumb rubber may be purchased from processing facilities in another State. It also does not prohibit a State from shipping its tires to another State for processing and recycling. If all the tires are shipped out of the State for processing, not disposal but processing which may include energy recovery, then the State would not be subject to this utilization requirement just as it would enjoy an exemption if all of the tires were processed within the State.

Mr. President, I would make one final point with respect to the definition of asphalt pavement containing recycled rubber. Most of the crumb rubber currently used in rubberized asphalt comes from tire retreading facilities. At these plants old tires are ground down to a bald casing and then new tread is applied to recondition the tire. The rubber produced in the grinding process is then sold for other uses including road construction.

That's one way to make crumb rubber. But as demand for crumb rubber expands beyond the amount that retreading operations can supply, it would not be the preferable way. Grinding the tread off a tire leaves a round casing that must be disposed. It is the round casing that is the environmental problem. It creates the breeding ground for mosquitoes, the gaps in landfills for rodents, and the fire fighting problems that occur at tire piles. This legislation will not solve any environmental

problem if it merely produces a pile of bald tire casings as large as the existing pile of scrap tires.

The crumb rubber consumed in response to the utilization requirements in this bill is to come from whole scrap tires. We mean by that phrase that casings and other round tire material cannot be left behind as a waste from the tire processing that produces crumb rubber for this bill. If there is a solid waste produced, it must be shredded material that will not hold water when stored above ground. We do not mean to say that shredded tire material cannot be used to produce the crumb rubber. That is not the meaning of the phrase whole scrap tires. Rather, the bill disallows credit toward the utilization requirement for any crumb rubber production process that leaves round tire material as a waste. Retreading operations that do not produce a waste would, of course, also qualify as sources of crumb rubber.

Mr. President, there were other definitions in the original Senate amendment for the terms processing and recycling. These items are not included in the conference report. We did not exclude these definitions from the conference report because of any disagreement about their substance. They were excluded because the House Energy and Commerce Committee felt they would be more appropriately established in solid waste than in highway legislation.

Scrap tires are a serious environmental problem—a rapidly growing problem now measured at 3 billion tires—that needs a creative solution. Highway construction with asphalt rubber pavement is a proven technology. Although somewhat more expensive, asphalt rubber pavement produces a better quality road that last for a long period of time. I am confident that this legislation can benefit both the environment and our highway users, if it is carried out in good faith by the Department of Transportation and the Nation's State highway agencies.

This bill reflects, in many respects, a revolution in our thinking about highways. The recycled rubber utilization requirement is just one of many fundamental changes in approach that we are asking to be made. I look forward to working with U.S. DOT and the States as this provision is implemented. They will be doing the country a great service if they take full advantage of the potential for good works that is incorporated in this bill. And that includes the tire recycling provision. Thank you, Mr. President.

I am disappointed that another provision I sponsored was not included in this bill. While the needed reforms to the Highway Beautification Act were not included in this bill, there are several positive steps that have been taken. States and localities are allowed to use their highway money to remove nonconforming billboards. In addition, the bill provides that no new billboards can be put up on interstate and primary scenic byways.

Mr. President, I would like to take this opportunity to discuss the provisions in the conference report that deal with the control of outdoor advertising. As the term control implies, the goal of these provisions is to remove illegal and nonconforming outdoor advertising on Federal highways, and on some scenic byways. While the provision contained in the bill reported earlier this year by the Committee on Environment and Public Works would have accomplished this goal—and more—in a manner more satisfactory to this Senator, the conference agreement does contain some positive points that I would now like to highlight for my colleagues.

First of all, Mr. President, I am extremely pleased that the conferees agreed to a provision that clearly prohibits the erection of any new billboards on scenic byways on interstate and primary roads. This is an important change in existing law.

Second, to further improve the view on scenic byways, the conference agreement provides that 10 percent of scenic byway funds can be used for billboard removal. This provision is an improvement over the House bill, which had prohibited the use of any scenic byway funds for this purpose. By making Federal money available, this provision will give States and localities much-needed assistance in removing billboards. And perhaps more importantly, it will move us closer to achieving the goal of making our scenic byways truly scenic, by allowing individuals to enjoy the beauty of nature without the clutter of billboards and other obstructions. In agreeing to both of these scenic byway provisions, the conferees intend to send a strong signal that billboards have no place on scenic byways.

Third, Mr. President, the conference report would require that either billboard owners or States remove billboards not lawfully erected. This requirement should bring about the removal of larger numbers of illegal billboards—a welcome result. This provision also correctly imposes the cost of billboard removal on owners, no matter who actually performs the work.

Finally, Mr. President, the conference report appropriately declines to interfere with the existing rights of States and localities to implement more stringent controls on billboards on all secondary and other roads not covered by the Federal highway program. States and localities also maintain complete authority to remove billboards according to their own laws on approximately 40 percent of the scenic highways in this country. In other words, States maintain their power, as repeatedly affirmed by a large number of State and Federal courts, to remove billboards by use of amortization if desired.

So in conclusion, Mr. President, while I would have favored a more aggressive billboard removal program, I am pleased that the conferees have chosen not to interfere with the important rights of State and local governments in this area. And, I am grateful for the commitment of scenic byway money to the task of billboard removal.

Mr. President, there are provisions in the Surface Transportation conference report that extend certain deadlines that were established for stormwater permit applications under the 1987 Water Quality Act.

Stormwater is one of our most serious water pollution problems. Up to 20 percent of the U.S. waters failing to meet water quality standards are impacted by polluted stormwater. The Environmental Protection Agency has been very slow to implement the requirements of the Clean Water Act as they apply to stormwater discharges. As long ago as 1974, the Federal courts ordered EPA to institute a permit program for stormwater under section 402 of the Clean Water Act. Despite the passage of 17 years there is still no permit program in place.

Responding to that discouraging record, in 1987 the Congress set deadlines for two classes of stormwater discharges, first, stormwater associated with industrial activities, and second, stormwater from municipally-owned storm sewer systems. The municipal requirements only applied to city and county storm sewer systems serving more than 100,000 people. The Congress put a so-called moratorium in place for the smaller cities—those under 100,000—setting aside the permit requirement until October 1, 1992, the expected date of the next Clean Water Act authorization.

EPA has developed a very complicated program to implement the 1987 stormwater amendments. It is very difficult for a busy city official or the owner of an industrial facility to figure out precisely what is required. One of the complexities is that EPA defined industrial activity in such a way as to require many cities with a population under 100,000 to make application for stormwater permits, notwithstanding the moratorium on permit requirements that the Congress thought it was putting in place.

EPA said that to the extent that a city of whatever size operates a facility of an industrial character like an auto maintenance yard or a powerplant or wastewater treatment facility, it is subject to the permitting requirements for industrial facilities. This requirement caught many city and county officials off guard and has generated considerable complaint.

When the highway bill was pending here in the Senate, I offered an amendment that would modify the permit application deadlines for small cities. I am pleased to say that this amendment has survived in the bill that has been returned from the conference. This legislation will clarify that small cities need not apply for permits associated with some of the industrial facilities they own or operate until October 1, 1992, date for the general moratorium on their permit requirement.

Small cities will be subject to industrial application deadlines for powerplants, airports, and some landfills. Cities with populations above 100,000 will continue to be subject to the full industrial permit application requirements. But the deadline for filing applications is extended beyond the dates that would otherwise have applied.

If a city is denied participation in a group or if the application of the entire group is rejected, these cities will be given 6 months from the date of denial to submit individual permit applications. I hope that these extensions will give cities an adequate opportunity to fulfill these requirements.

Mr. President, this bill extends deadlines that were established by statute. Congress puts these types of deadlines in the law to assure that a particular step, especially one that is overdue, is carried out by an executive branch agency. If the agency fails, the deadlines give citizen groups an opportunity to go to court to force action by a recalcitrant agency through court orders.

Just such a development has occurred in this case. EPA has failed to carry out mandated activities for stormwater permitting by the deadlines established in the 1987 Water Quality Act. A citizens group, the Natural Resources Defense Council, Inc., has sued EPA in Federal court to enforce the deadlines. When this bill becomes law, some part of the NRDC case will be set aside. We do not ordinarily change deadlines under these circumstances. It would be a foolhardy practice. We have included deadlines in statutes so that citizens can force implementation of the law. If we simply extended the deadlines whenever they sued, they would soon abandon their efforts to assure the diligent application of the law.

So, this limited extension is an extraordinary event and is taken only because the EPA definition of industrial activity to include facilities owned by small cities was a surprise, an outcome not intended by the Congress. The amendment only affects a limited portion of the overall stormwater program and it certainly would not be our intent to affect litigation with respect to any other deadlines for any other facilities. That litigation should be decided based on the language of the statute and the record which the Congress established at the time that it was enacted. I believe that full application of the Clean Water Act to stormwater discharges is long overdue and would encourage the most expeditious action to address this serious water quality problem.

Mr. MOYNIHAN addressed the Chair.

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

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Declaration of Policy be printed in the RECORD.

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

DECLARATION OF POLICY: INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT.

It is the policy of the United States to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy and will move people and goods in an energy efficient manner.

The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the Nations' preeminent position in international commerce.

The National Intermodal Transportation System shall include a National Highway System which consists of the National System of Interstate of Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.

The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to world commerce.

The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion and other aspects of the quality of life in the United States.

The National Intermodal Transportation Systems must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity growth and accountability. Practices that resulted in the lengthy and overly costly construction of the Interstate and Defense Highway System must be confronted and ceased.

The National Intermodal Transportation System shall be adapted to "intelligent vehicles", "magnetic levitation systems" and other new technologies wherever feasible and economical, with benefit cost estimates given special emphasis concerning safety considerations and techniques for cost allocation.

The National Intermodal Transportation System, where appropriate, will be financed, as regards Federal apportionments and reimbursements, by the Highway Trust Fund. Financial assistance will be provided to State and local governments and their instrumentalities to help implement national goals relating to mobility for elderly persons, persons with disabilities and economically disadvantaged persons.

The National Intermodal Transportation System must be the centerpiece of a national investment commitment to create the new wealth of the Nation for the 21st century.

The Secretary shall distribute copies of this Declaration of Policy to each employee of the Department of Transportation and shall ensure that such Declaration of Policy is posted in all offices of the Department of Transportation.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from California, Senator CRANSTON.

Mr. CRANSTON. Mr. President, my remarks, too, will be brief because I know we are trying to expedite this bill. I do want to say I am delighted the Senate is finally able to act on the Federal Transit Act Amendments, which make up a key title of the landmark transportation bill now before us.

Reaching this moment is an enormous achievement. And I want to thank the Members of this body who have brought about this achievement. Most of all, Senator PAT MOYNIHAN, whose leadership has been marvelous on the measure; Senator QUENTIN BURDICK, who likewise has been very strong and effective in regard to this measure; along with JOHN CHAFEE, DON RIEGLE, PAUL SARBANES, ALAN DIXON, AL D'AMATO, KIT BOND, and STEVE SYMMS.

The Federal Transit Act is the product of many transit leaders, here in Congress, nearby and across the country. Several months ago, the Senate Subcommittee on Housing and Urban Affairs, which I chair, invited policy recommendations from transportation leaders across the country. We convened a national symposium on public transportation. We have held hearings here in Washington and in other parts of the country. And we have turned those recommendations into landmark legislation. I am delighted to have played a part in all this.

With this bill, Congress recognizes that the country simply cannot achieve nationwide mobility solely by building bigger and better roads to accommodate more and faster motor vehicles. This bill shows that we are finally learning the costly lesson that more highways do not always bring mobility—particularly in our major population centers, new highways tend to generate new congestion.

The costs of highway construction have been far greater than the $129 billion in direct spending on the interstate system.

We have paid that cost through intolerable traffic congestion. Some 6,000

miles of California's main roads are choked to capacity in peak hours, and California's work force spends 300,000 hours each day in traffic gridlock. The same congestion is an unpleasant fact of life in many, many States.

We pay that cost through air pollution. Eight of every 10 Californians now live in areas with polluted air, much of it transportation related. The same pollution is an unpleasant and unhealthy fact of life in many, many States.

We pay that cost through overreliance on foreign oil. And each additional car we attract onto the road requires an extra 200 gallons of gasoline per year.

These problems can only worsen if we continue current transportation policies. California's freeway congestion is expected to rise by more than 400 percent during the next 20 years. Some States may not yet have the highway-related crisis that has already hit California, but the trends are ominous throughout the country.

For decades our narrow-viewed highway policy has been leading us up a blind alley. The conference agreement finds a better path.

This legislation launches an historic reform of American transportation—in both the highway and transit titles.

I believe this bill will enable the Nation to gain the efficient, integrated transportation system we will need for the future.

On the highway side, the landmark $24 billion Surface Transportation Program gives State and local officials more authority to decide how to use their transportation dollars to buy the most mobility for their people.

An increase in the minimum allocation from 85 to 90 percent ensures that donor States like my own State of California receive a more equitable return on the contributions they make into the highway trust fund.

The bill provides $16 billion to replace and rebuild the Nation's long neglected bridges. It provides major new assistance for a magnetic levitation trains, a new technology that holds enormous promise for the future.

I am particularly pleased with the transit title of this bill. Transit is ever more important to every part of the country. It serves millions of Americans—from the heavy rail transit that is expanding in our largest cities, to bus service in our medium-sized cities, to van-based paratransit services that meet special needs in smaller communities.

The conference report provides program funding levels that will reverse a decade of neglect and disinvestment in public transit systems.

It makes a commitment to better transportation. It sets a new, can do challenge for the administration. It will put an end to the no-can-do, antitransit attitude that has bottled up sound transit projects for the last decade.

The conference agreement makes a number of important changes in transportation policy.

First, the bill will provide a substantial increase in funding transit. Compared with last year, fiscal 1992 transit funding would increase by 12 percent and fiscal 1993 transit funding would increase by 60 percent. This increase is urgently needed after a decade in which transit was cut by 50 percent in real terms and transit needs have been ignored by the White House.

Second, the bill will fund both the discretionary grant program and the formula grant programs partly out of the transit account of the highway trust fund and partly out of general funds. That ensures a broader distribution of transit account funds.

Third, the bill opens up the highway trust fund so that highway and transit dollars can be used to improve mobility in the most efficient way—whether that is with roadways, or transit, or some multimodal solution. This is a vitally important aspect of the bill. The bill provides protections so that funds will not be drained from basic transit needs.

Fourth, the bill makes sure we get the most bang of transportation service for every transit buck that is made available. The bill improves full funding grant agreements to stretch available funding over more projects and enables transit operators to finance and manage long-term projects more efficiently. The bill also will permit operators to enter into long-term purchasing agreements for buses and rail cars to provide fleets of compatible vehicles that can be operated and maintained more efficiently. In addition, the bill will provide new authority that is need for turnkey procurement of high technology transit systems.

Fifth, the bill addresses differing needs of mass transit systems across the country—providing valuable reforms affecting new starts, system extensions, rail modernization, bus procurement, and paratransit services. The bill doubles transit assistance to rural areas—and significantly increases funding the transit services to persons with disabilities.

Sixth, the bill gives major metropolitan areas—those with populations over 200,000—substantially more power to develop comprehensive, long-range plans for meeting their long-term transportation needs. For the first time, we will closely link transportation planning with the actual budgeting of scarce resources.

Seventh, the bill removes the bias against the choice of transit when it is the most efficient use of Federal transportation funds. The bill provides a more level playing field between transit and highways. The Federal match will be a more uniform 80 percent, and some time consuming red-tape will be cleared away.

Eighth, the bill provides more timely review and more assured implementation of sound transit projects.

Ninth, the bill retains provisions in the existing law that require locally developed transportation plans and programs to encourage the participation of private enterprise to the maximum extent feasible. The conference agreement makes it clear that these provisions are not to be construed to impair local authority to determine the feasibility and benefits of private sector participation with respect to any program element or project.

The provisions unfortunately were abused to a completely unacceptable degree under the previous administration. For that reason the issue was the subject of explicit debate and decision by the conference committee. The current administration's recent action to jeopardize grants to St. Louis and Phoenix are specific and very alarming cases of attempted Federal intrusion in local affairs.

Senate conferees strongly opposed any hint that this new bill gives the Secretary a new weapon to extend Federal power in this regard. And the conference accepted that position. The conference agreement explicitly provides that the Secretary does not have authority to withhold certification of any metropolitan planning organization [MPO], which would cut off funding for transit grant recipients, based on any disagreement the Secretary may have with the policies and criteria that the local MPO or transit grant recipient establishes to determining the feasibility of private enterprise participation in accordance with section 8(e) of the Federal Transit Act.

And finally, the bill reinforces the country's ability to achieve the Clean Air Act, the Americans with Disabilities Act and other important national objectives.

The bill reflects the suggestions of many transit leaders across the country. The bill breaks some important new ground to provide for more effective mass transit. The bill offers the kind of advanced, integrated transportation system that the country desperately needs—a transportation system that cuts air pollution, conserves fuel, and clears roadway congestion.

The economy needs this bill. Construction workers need it. Commuters need it. Industry needs it. Families need it. The President should sign it promptly and ensure that it is implemented.

Mr. President, the hour is late. The bill is sound, and it is imaginative. I urge my colleagues to enact it promptly.

STAFF

Mr. President, I thank the following staffers, all of whom did great work on the transit section of this bill. Eileen

Gallagher of the Housing Committee staff who had key responsibility for the transit title. She performed her work with remarkable diligence, competence, and professionalism. Kris Warren of the Housing Committee staff, Jeannine Jackes with Senator RIEGLE, Fred Millhiser with Senator SARBANES, Pam Ray-Stronk with Senator D'AMATO, and Clarie Hefferman with Senator BOND.

Mr. President, the transit section of this bill is what I worked on in my capacity as subcommittee chairman. I just want to say that what we have accomplished for rapid transit as an alternative to more and more congestion, more and more pollution, more and more wasted hours in traffic jams all across the country—horrible in my State, horrible in other States, looming in virtually every State—is a tremendous accomplishment. We will be able to move our people much more rapidly on whatever missions they must undertake that involves travel.

We see a revolution in the way Americans move about our country in the course of time as a result of that part of the bill. I am proud to have worked on it and I am delighted that we have had such cooperation from Senator MOYNIHAN and Senator BURDICK and others who recognized the need for this change of direction in our transit policies.

I yield the floor.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina, Senator THURMOND.

Mr. THURMOND. Mr. President, I commend the chairman of the Transportation Subcommittee, the Senator from New York, and the ranking member, the Senator from Idaho for their hard work on this bill. But, as I look over the report I sense the only redeeming attribute of this legislation is that it will produce jobs and that South Carolina will receive more funding than when the last highway reauthorization bill was adopted, yet, there is still injustices in this legislation. The conference produced a bill that is very unfair.

I rise today in strong opposition to the conference report accompanying H.R. 2950, the surface transportation bill. This bill perpetuates—I repeat—perpetuates—and even exacerbates inequities in the distribution of highway funds over the past 35 years. I was a member of the committee in the Senate that wrote the interstate bill in 1956. The chairman of our subcommittee at that time was Senator Gore, father of Senator AL GORE, who is in the Senate today.

Under the conference report's formulation, South Carolina receives 1.4 percent of the total available funds. Yet in fiscal year 1990, the State contributed 1.7 percent into the trust fund. I ask you: Is that fair? I ask the chairmen and ranking member, is that fair.

Is it fair that South Carolinians should be asked to continue putting in so much more money than they get back? Of course, it is not fair. What justification can they offer my constituents in South Carolina for this kind of treatment?

This inequity is even more striking when you consider that South Carolina contributed more than it received from the trust fund from the time the interstate system was established in 1956 through 1991.

This bill also includes provisions which will reimburse States for four-lane highway system construction prior to 1956. States built these roads without any expectation at the time that they would be reimbursed. Why are we now, 35 years later, going back and reimbursing States for roads they built prior to 1956? We do well to pay for roads built today and in the future. Going back 35 years and reimbursing States; is that fair? Of course, it is not fair. And they know it is not fair.

I had one member of the Committee whose State was in the same position as South Carolina, and I asked him about this matter. I will not say whether he is a Senate or House Member. I asked him why he changed his position. He said, "Well, I was on the committee and the committee let me have more. Therefore, I changed my position." Is that a matter of principle?

Mr. President, everybody in the same position should be treated alike. That is not being done in this case.

This bill continues the inequities of the past by keeping the current donor-donee system in place. This unfairness should not continue. How much longer is it going to go on? How much longer is South Carolina going to contribute more than it receives? South Carolina is a small State.

This bill should not pass. It is going to pass because they worked it out to get enough support at the last minute and everybody is ready to go home.

This is an unfair bill. It is an unjust bill. I say to the chairman and the ranking member and every Member of this conference committee, this is not a fair bill. It is unjust.

Mr. President, I ask unanimous consent to have an article by Lee Bandy which appeared in the State newspaper printed in the RECORD.

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

[From the State (SC), Nov. 27, 1991]

HIGHWAY BILL WOULD TAKE S.C. FOR A RIDE, OFFICIAL CHARGES

(By Lee Bandy)

WASHINGTON.—South Carolina officials say a $151 billion, six-year highway/mass transit bill shortchanges the state to help other regions.

"This bill continues more than 35 years of previous injustice," said Robert White, the state's chief highway engineer.

The bill was making its way through the House and Senate Tuesday night.

It authorizes $110.0 billion for highways and $91.0 billion for transit systems, a 40 percent increase in funding over previous years.

The state proposes to spend the bulk of its $1.6 billion to upgrade, widen and maintain its interstate highway system.

The measure authorizes three construction projects for the State; $25 million to replace the Cooper river Bridge, $6 million for the Southern Connecter in Greenville and $10 million for the Carolina Bays Parkway from Georgetown to North Myrtle Beach.

Another $500,000 is earmarked to study a proposed light-rail commuter line between Rock Hill and Charlotte. The bill also proposes a major highway from Charleston to Detroit.

South Carolina officials, however, are not satisfied with the funding formula. They said it denied the state a fair return on its investment.

South Caroline is one of 22 so-called "donor states" that traditionally have paid more into the Highway Trust Fund in taxes that they have received back for federal highway construction and maintenance.

To minimize the impact on donor states, negotiators accepted a provision guaranteeing that states would receive 90 percent of the funds they contribute to the trust fund in gasoline taxes.

Over the six-year period, South Carolina is scheduled to receive more than $1.5 billion for highways and transit programs.

"That's a lot of money," White said. "But over the same period of time, South Carolinians would put in a lot more than that."

Asked about the 90 percent guaranteed return for south Carolina, White said: "I'm skeptical. I just find that difficult to accept at this point."

Based on figures he had, White calculated that South Carolina would get only 0.3 percent return on its investment.

"That puts us 50th out of 50 states. We're dead damn last," White said.

White estimated South Carolina would be shortchanged about $327 million over six years.

The centerpiece of the new bill is a $38 million national highway system. It would consist of the current interstate high system and other major highways to be designated later.

Up to 50 percent of the funds for that project could be spent on other road programs or transit.

States would also have another $24 billion to spend on new surface transportation programs that could essentially go for anything from highways to transit. The bulk of it, however, would have to be spent in cities with more than 200,000 people.

The bill also authorizes funding for interstate maintenance ($17 billion), bridge repair ($16.1 billion) and congestion management and air quality ($6 billion).

The highway program will be financed by extending half of last year's 5-percent gasoline tax increase, which is scheduled to expire.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wisconsin [Mr. KASTEN].

Mr. KASTEN. Mr. President, I want to add my support to the conference report on the Intermodal Surface Transportation Efficiency Act of 1991. My primary purpose for doing so is that, on the bottom line, Wisconsin will see a historic increase in the return of Federal dollars to our State.

The $2.2 billion that will come to Wisconsin under this bill will more than double the $1.05 billion that we received under the last highway bill.

For the last 35 years, Wisconsin has suffered under the funding formulas that have seen our taxpayers paying $1.15 billion more into the Federal highway fund than we received in return. We had hoped that those underlying formulas could be changed as we entered a new post-interstate construction era. This has not happened, but for the next 6 years covered by this bill, Wisconsin will receive back $1.10 for each dollar we pay in gas taxes. We will be receiving $2.183 billion under the highway portion of this bill, and about $50 million under the transit provisions.

This higher dollar return is due to the fact that we are finally spending down the highway trust fund at a higher rate over the next 6 years. It is time that these accumulated balances are now being applied to our infrastructure needs.

Even when we look at the return to Wisconsin based upon the amount of the overall pot that we receive compared to the amount that we pay in, we have increased Wisconsin's return from a historic rate of 74 cents to a 98 cents return for each dollar paid in under this compromise legislation. That is a 32-percent increase which has been a long time coming.

I have fought hard to see that the overall rate of return to Wisconsin reflected the equity that Wisconsinites deserve. Under this highway bill Wisconsin will receive 1.9 percent of the total highway funds.

I am also pleased that we are not delaying any longer, this important legislation that authorizes the highway programs that have been in limbo since October 1. In Wisconsin, the Department of Transportation and the 120,000 persons whose jobs depend on this funding can now get to the business of improving our roads, bridges, and transit infrastructure, rather than worrying about the future.

In the transit portions of the bill, Wisconsin will benefit from the increased funding devoted to transit, as well as the increased flexibility in the legislation for the State to utilize highway funding for transit projects. Wisconsin's small and medium-sized transit programs will benefit from increased funding and the cap on Federal operating assistance for the Milwaukee and Madison systems has been lifted.

I am also pleased that the transit title includes a provision that will enable Milwaukee to obtain $200 million for the light rail project, assuming that it is approved by the alternatives analysis now underway. This is a tremendous win for southeastern Wisconsin and the State as a whole.

All in all, we have accomplished a lot for Wisconsin in this legislation. Most importantly we have obtained for our State the equity in the return of Federal dollars that has penalized us since the highway trust fund was established in 1956. We have won small increases along the way, but what we achieve in this legislation marks a historic improvement for Wisconsin that will serve our surface transportation needs for the next 6 years.

Mr. SYMMS. Mr. President, it has come to my attention that a technical change is needed to correct the route number designation of a particular project contained within the bill. At section 1014(c)(2), page 73 of the bill at lines 2 and 4, U.S. 81 has been mistakenly listed as U.S. 91. In order to properly designate this project, this change needs to be made.

Mr. MOYNIHAN. Mr. President, I agree, this change must be made. We urge the House under its authority to make technical and conforming corrections to address this error and make these corrections.

Mr. MOYNIHAN. Vote.

Mr. SYMMS. Vote.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska [Mr. EXON].

Mr. EXON. Mr. President, the Senator from Nebraska is from a Western State. The Senator from Nebraska would very much like to be home with my family for Thanksgiving. I simply want to echo the remarks of some of my colleagues who have spoken since I addressed this matter earlier in the day.

We set a terrible precedent each and every year when we come up against an adjournment timetable. I am not sure, but I have suspicions that these, like other controversial bills, are, by design, put off and put off and put off until people start wanting to catch airplanes to go home.

I have listened with great interest to several of my colleagues who have risen in support of this piece of legislation. For the most part, I suspect if I were similarly situated to them, I, too, would be up applauding the efforts.

I just heard a very excellent address by my great friend and colleague from South Carolina. There is no Member in the Senate that I have more respect for than the senior Senator from South Carolina because of his knowledge, and because we worked together for years on the Armed Services Committee. And I like it when he feels things from his heart.

I was interested in hearing the discussions between the Senator from Michigan and the distinguished chairman of the Subcommittee on Jurisdiction. I also listened with keen interest to the Senator from Alaska, who indicated he supported the bill because Alaska came out very well. In fact, I could not help but notice, indeed, Alaska, which is a sparsely settled State, needs some special consideration. They have been a good donee State for a long, long time, and justifiably so, as expressed by the junior Senator from Alaska.

I could not help but recognize, though, another point of the unfairness; that is, that Alaska gets more total dollars in this bill than does Nebraska. Nebraska is in the heart, the center of our country. It is a major transportation link across the United States. Yet, under this bill, we are spending more money in Alaska than we are in Nebraska.

I think that is rather interesting.

I would like to make inquiry of the managers of the bill as to these formulas that brought about this grand compromise that, as the Senator from South Carolina has clearly indicated, came up with some rather amazing figures, give and take.

I listened with interest to the comments by the Senator from Michigan about $20 million, minimun, somehow being put into the bill for each State. I suspect that that $20 million gift is in the Nebraska totals. But I could not imagine what our totals would be without it.

I would simply like to see if I could understand, whether or not there is somewhere printed, or if it could be explained in detail before we go ahead with a vote on this measure, as to exactly what formula was used? What is the formula that brought about the final listings, at a very late date, as to what State gets what?

Mr. MOYNIHAN. I am happy to respond.

Mr. EXON. I am happy to yield, without losing my right to the floor, to my friend from New York for the answer to the question.

Mr. MOYNIHAN. May I say, no one is trying to test the Senator's right to the floor, but by all means.

The Senator asked a good question to which there is a complicated answer. The net return per State begins with interstate construction and substitution.

It will take us 4 years to finish out the Interstate System finally and for good; to write the last check. The Senator from Massachusetts is here. The last major project of the Interstate System will be in Massachusetts, and in 4 years' time, that will be paid for and done. Whether the project is finished or not, the money will be paid.

In Nebraska, all of its projects were built years ago, and it is 1 of about 15 States that gets zero. Wyoming gets zero; Virginia gets zero; and Texas gets $153 million.

California, which gets three quarters of a billion, has one more project, the Anderson Freeway in Los Angeles. It is just about finished. That is three quarters of a billion. Massachusetts, the third tunnel and the central arterial, that comes to about $2.5 billion. That is just finishing the Interstate System.

Then we have interstate maintenance, which depends on the amount of miles you have. It is just a direct function of the miles of interstate, lane miles.

Then we have a bridge program which is allocated by the number of defective bridges.

Then we have the National Highway System, which is allocated by State, since we do not have an actual mileage in the NHS yet. We hope to have, in 2 years' time, when the Secretary of Transportation will recommend—out of the 150,000 miles, roughly, they will give us 121,000.

Then we have a surface transportation formula which is based on your historical receipts. Then we have a 90-percent minimum allocation. Then we have Federal lands.

On Federal lands, the State of Nebraska, which has a great deal of Federal lands, gets $136 million. The State of Maine gets zero dollars. The State of New York, for some strange reason, gets $690,000; we get $690,000. Nebraska gets $136 million. I think we probably get some credit for Bedloe's Island, or something like that.

Then we have the congestion and air quality, which is a formula directed to the number of nonattainment areas in your State.

Southern California and northern New Jersey are one vast nonattainment area. Then we have the reimbursement formula, which was provided for in the 1956 legislation.

Then we have a hold-harmless to help people see that nobody gets less than they used to get. Then we have a 90-percent attainment, and we have projects. In this bill, Mr. President, I say to my dear friend, for every dollar in gasoline tax paid by the State of Nebraska, the State of Nebraska will get back $1.27 cents. In the period, your total dollars will go up 70 percent more than the last program. You get $1.27 cents for every dollar, and in this program, being the largest program in history, in the next 6 years you will get 70 percent more than you got in the last 5. More I cannot say.

Mr. EXON. I thank my friend from New York for his explanation. At least we have it on the RECORD now as to what this formula is, and I suspect that there was more to some of the negotiations that went on than meets the eye. At least, though, we do have some written explanation at the present time as to what it is based on.

Mr. MOYNIHAN. Can I add one point?

Mr. EXON. Sure.

Mr. MOYNIHAN. We are very much aware that the formula that built the interstate highways will not take us easily into a postinterstate era. We have done the best we can because we are still partly in the interstate era. We have 4 years of payments, too. We have asked the General Accounting Office to give us its best estimate of how to go forward now. And in 6 years' time, you will not recognize this sheet. It will, I hope, in 6 year's time, if we are still here, or our successors—there will be somebody here—it will have three columns. One will be interstate maintenance; the other will be National Highway System; the third will be surface transportation.

Mr. EXON. I thank my good friend and colleague from New York. The figures he cited with regard to Nebraska and how much more we are getting is the typical pitch that has been made to the House Members and the Senate Members. The facts of the matter are all States are getting a whole lot more money than they had in the last 5 years; is that correct?

Mr. MOYNIHAN. Yes.

Mr. EXON. Since the Senator from New York brought up the matter of donor-donee States—and I certainly recognize and accept the fact that Nebraska has traditionally been a donee State, a la the reference made to this earlier in the day by the Senator from Indiana. Certainly, it was not said by the junior Senator from Alaska, but also, obviously, Alaska has, I suspect, always been donee State.

Since we are talking about that, that brings me to the question with regard to the fairness of the formula. There are several donee States that I am about to mention with some figures that, like Nebraska, are donee States and yet those donee States, other than Nebraska, while most of them are more donee than Nebraska, do much better than Nebraska in the funding formula.

Example. And I use these figures, which are honest figures, and since we had a 5-year authorization bill in the Senate and a 6-year authorization bill in the House—and I might stop for a minute and say, how did that happen? I think that all gets tied up in the increased tax measure that is in this bill. Originally, the House of Representatives had a 5-year authorization bill, also, with an immediate increase of 5 cents on the gasoline tax on top of the 5 cents that was embodied in the Andrews grand summit deal last year where the President's lips quivered. There was so much opposition to that, the 5-cent-gas-tax increase, that the House recognized that they could not have all of their pork barrel projects that have been alluded to by this Senator and others time and time again, and they backed off and said, what can we do? The first thing we do is stretch it out to 6 years. The second thing we do is not have a 5-cent gas tax to go into effect now. We will take half of that, or 2½ cents, and add it on to the end of the bill that was passed last year that otherwise would have allowed the full 5-cent gas tax to expire in 1996. With all that combination, the House was able to fool the Senate into thinking that they were basically adopting the Senate bill when, in fact, in my opinion, we have not.

But getting back to the matter of the figures that I am about to cite, since there are differences between the House bill and the Senate bill, obviously, the key difference between the two bills, as I addressed earlier was that we provided significant increases to all the States, including 70 percent or more as opposed to the last 5-year program in the bill that passed the Senate.

What we have now come back with, I suggest, is a different bill altogether. It is kind of the Dr. Jekyll and Mr. Hyde proposition. We had a Dr. Jekyll bill that went out of here. It comes back into this body as Mr. Hyde. And yet we are trying to hide some things in that bill that are not fully understood, which, if for no other reason, is why I think the President should veto the bill. Once again, as I did earlier, I call upon the President to veto the bill, call us back into session immediately and redo it.

The figures then that I cite—and the only way that we can look at this honestly and accurately is to talk about a 1-year average figure under the two bills passed, one in the House, one in the Senate, and now how that figure matches up in the conference report that is before us.

All of these States that I am about to cite have precious little to do with the donor-donee proposition. Again, Nebraska is and will continue to be, because of our sparse population and large land mass, a donee State.

New York is also a donee State and has been for some time. I simply point out that on a 1-year average basis, New York was allocated $960 million on the average of each year in the Senate bill. It was allocated less, $917 million, in the House-passed bill. The final conference report that we are being asked to support jumps it up to $1.24 billion. New York, a donee State, does very well, indeed. Maybe it is justified, but I am pointing out the differences.

Ms. MIKULSKI assumed the chair.

Mr. EXON. Madam President, Idaho got $105,451,000 under the Senate bill. It really got killed in the House bill. They dropped Idaho down to $97,182,000. The conference report comes back with $134,806,000 for Idaho. I have to say, Madam President, in all due respect and appreciation for the Senator from Idaho, who played a key role in putting this all together, I do not think he took advantage of the situation with regard to Idaho. It seems to me that the Idaho compromise that I have just outlined is a good one.

North Dakota, $123,000 in the Senate bill, down to $97,000 in the House bill. They come right back up to $123,000 in the compromise.

Montana, $213 million in the Senate bill, down to $102 million in the House bill. It comes back out at $178 million in the compromise, again a compromise on the upper side of the scale

favoring Montana, which I do not necessarily object to. New Mexico, $222 million in the Senate bill—wow, down to $130 million, Madam President, in the House bill, and back up to $195 million in the bill before us, the conference report. Nevada, $126 million in the Senate bill, $90 million in the House bill, $131 million in the conference report before us. Nevada did very well, indeed. South Dakota, $145 million in the Senate bill, down to $94 million in the House bill. They got $132 million in the bill before us, another compromise on the upper side of the scale. Iowa, $259 million in the Senate bill, $235 million in the House bill, $242 million in the final measure before us, again a compromise in that case slightly on the down side. Minnesota, $303 million in the Senate bill, down to $291 million in the House bill, jumped all the way up to $324 million in the version before us. And just to put everything in perspective, Nebraska, $199 million in the Senate-passed bill, down to $153 million in the House bill, and down even below both the Senate and House figures to $152 million in the measure before us.

I think that if anyone took a look at those donee States as separated from the donor States, which have a different and special problem that I recognize, I would think the formula just outlined to us can be proven as not only unfair but unworkably unfair from the standpoint of many of us.

Madam President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will speak just briefly on this matter that is of considerable importance to my State.

I commend the Chairman of the Transportation Subcommittee, Senator MOYNIHAN, and the ranking Republican member, Senator SYMMS, for their leadership and bipartisan cooperation in developing this far-reaching and farsighted legislation. I also commend Senator CRANSTON and Senator D'AMATO for their leadership on the mass transit issues in this important measure.

I give my strong support to this farreaching transportation measure that will help to bring our economy back to health in the short run, and help in the longer run to move our country into the 21st century with a better, more efficient, safer, and cleaner transportation system.

This bill is one of the most significant public works and infrastructure measures ever enacted by any Congress. It will provide a major boost for the construction industry and for the national economy, at a time when the stimulus is most urgently needed.

In addition, it will provide an immediate and continuing economic stimulus for the Massachusetts economy, which has been suffering especially heavily from the current endless recession. It will help to get thousands of workers back on their feet and back on the job.

The major provisions for Massachusetts include $2.55 billion over the next 4 years for construction for the Central Artery-Third Harbor Tunnel, to improve and upgrade what is now the single most dangerous and congested stretch of the entire Interstate Highway System.

The bill also contains substantial funds for development of a new bus tunnel to link downtown Boston with the fast-growing South Boston Piers area and the new Federal courthouse now under construction there. This key transit project will be especially helpful easing the urban congestion in Boston and reducing pollution.

The bill also contains $911 million for much needed bridge repairs and maintenance throughout the Commonwealth. In addition, it includes major funding for research and development on high-speed rail technologies, and for other innovative programs such as smart roads that use sophisticated computer technology to anticipate traffic problems and prevent gridlock.

The legislation provides large amounts of new Federal dollars directly to States and local communities, and gives them greater flexibility to decide their own transportation priorities—whether for mass transit, construction of new roads, or maintenance of current roads and bridges.

Finally, on a related issue, I believe that Congress should stay in session next month in order to deal in a more comprehensive way with the recession and the festering and complex challenges facing our economy.

This transportation legislation is an important first step in fashioning the stimulus we need to end the recession as soon as possible. But it is far from the only step we must take.

It would be irresponsible for Congress to adjourn for 2 months, with the economy in trouble.

President Bush is being buffeted by his economic and political advisers. All he proved yesterday is that he has no policy of his own. He lunged too quickly for a right-wing House Republican proposal that would be unfair to the vast majority of middle-class and working American families.

It is Alice-in-Wonderland economics at its worst-vote first, think later.

In the coming month, it should be our goal to fashion the more comprehensive, fair, and fast-acting stimulus needed to pull the Nation out of this continuing recession. I believe we can meet that challenge, and do so in a bipartisan, constructive way that will be good for the economy, good for the country, and fair for all the American people.

Mr. GRASSLEY. Madam President, I will be voting for the conference report on the 1991 surface transportation reauthorization legislation. I do so with some enthusiasm and with some reservation.

Let me begin on a positive note. One of the reasons I am supporting this legislation is the fact that we have this legislation at all. There has been much discussion that we might not have a bill. And that would have been tragic.

According to the American Association of State Highway Transportation Officials, an estimated 409,000 jobs and $27.8 billion in output could be lost if this legislation does not pass. The impact of these jobs lost would be devastating just as we are trying to move out of the recession. My home State of Iowa would share in this loss, totaling over 4,000 lost jobs with over $70 million in reduced spending. So I am pleased to see that we are able to consider this legislation today.

Another reason I am supporting this bill is the question of fairness. It is my assessment, and the assessment of officials it is my assessment, and the assessment of officials with the Iowa Department of Transportation, that the State of Iowa is treated fairly under this bill. Would I like to have seen Iowa get more money than is provided in this legislation? The answer is yes. But, do I think Iowa is treated equitably under this bill? I do.

I am also pleased to see that certain demonstration projects are included in this bill * * * projects that are very important to my State. These include the Avenue of the Saints corridor, the Highway 63 corridor, the extension of Highway 2, the Mason City bypass, and the Valley View project in Council Bluffs.

I would like to take a moment to discuss the Avenue of the Saints project. To refresh my colleagues' memories, the Avenue of the Saints is a major north-south highway which would connect the cities of St. Paul, MN and St. Louis, MO.

The Avenue of the Saints study committee, which consisted of the departments of transportation from Iowa, Illinois, Wisconsin, Missouri, and Minnesota as well as the Federal Highway Administration, was commissioned to determine the best route for the Avenue of the Saints. Last year, after exhaustive study, this study committee released their findings. They determined that the best route for the Avenue of the Saints would start in St. Louis and pass through the following communities: Hannibal, Keokuk, Mt. Pleasant, Iowa city, Cedar Rapids, Waterloo/Cedar Falls, Mason City and up to Minneapolis/St. Paul.

In late July of last year, Secretary Sam Skinner sent me a letter stating that the Department of Transportation fully supports this route for the Avenue of the Saints.

The entire Iowa congressional delegation has worked diligently over many

years in an effort to complete the Avenue of the Saints. This legislation will go a long ways toward making the Avenue of the Saints a reality. In addition to the inclusion of the demonstration project, this legislation gives unprecedented discretion to States and metropolitan planning organizations to make transportation decisions. The Iowa Department of Transportation and Gov. Terry Branstad have publicly stated that the Avenue of the Saints is the transportation project for the State of Iowa. They will have the discretion to allocate the needed moneys to make the Avenue of the Saints a reality in the very near future. With this discretion, the Iowa Department of Transportation estimates that the Avenue of the Saints will be completed as a four-lane expressway by the end of the decade.

Another element of this legislation that I support is the inclusion of the National Highway System. The National Highway System is a network of primarily existing major highways throughout the country. The National Highway System will include the Interstate System and would connect major population centers, rural areas, major ports, airports, and international border crossings.

The idea of a National Highway System is critical to maintain the integrity of an efficient transportation system throughout the United States. I believe it is essential to dedicate a substantial portion of Federal highway dollars into a system that will meet national needs. A National Highway System would connect those highways that serve national commerce, travel, and defense needs.

Mr. President, "flexibility" and "national purpose" are not diametrically opposed to one another. They can work hand-in-hand. The flexible nature of the Surface Transportation Program will only work to better enhance the National Highway System * * * The National Highway System will give a national focus to the flexible funding decisions on the part of the States and metropolitan planning organizations.

It is for these reasons that I will vote for this legislation. But I do so with one reservation and that is the gas tax extension of 2.5 cents for 4 additional years.

Nevertheless, I believe that we can claim a substantial victory in one sense. We were able to successfully fight the nickel gas tax that the House of Representatives supported earlier this year. For that I am grateful.

Though I will vote for this bill, I wanted to make note that the extension of the gas tax is one element that I do not support and have actively opposed. But because this bill is so important to the entire Nation's transportation system, and specifically to my home State of Iowa, I am willing to support its passage despite my reservations with this specific provision of the bill.

And finally, Madam President, let me congratulate Senator SYMMS and Senator MOYNIHAN for their valiant efforts. Without their thoughtful leadership, commitment, industry, and patience, we would not be here today. I would like to thank them and honor them for their work.

Mr. CRAIG. Madam President, I rise in support of the Conference Report on H.R. 2950, the Intermodal Surface Transportation Efficiency Act. It is a forward-looking and much needed piece of legislation which will go a long way toward building and maintaining the roads and bridges of America as we head into the 21st century. The legislation will provide $154 billion for our Nation's infrastructure over the next 6 years, more than $811 million of which will go to my State of Idaho.

Although Congress has failed to meet the President's 100-day deadline for the transportation bill by some six months, largely due to bickering in the other Chamber about increasing the gasoline tax another nickel, I know I speak for all in Idaho when I say this bill is badly needed.

The credit for this legislation and its being passed this year belongs to Senator MOYNIHAN and the senior Senator from Idaho, STEVE SYMMS. I would like to thank them for their hard work. As we have already acknowledged here on the Senate floor, the Senior Senator from Idaho will be sorely missed when the 103d Congress convenes in 1993. I especially praise him for his leadership.

This legislation has many positive features. I would like to mention and comment on a few.

Without a doubt, the most important aspect of the conference report, as with the Senate passed version, S. 1204, is its flexibility. As a member of the House Committee on Public Works and Transportation, I spent much of the last session of Congress listening to testimony from State transportation officials. What I heard them saying was that they need flexibility; they do not need Federal strings tied to the Highway Trust Fund moneys.

Nevertheless, House conferees insisted on the inclusion of so-called demonstration projects and a certain number of these have been included. To the extent that these projects have been reviewed and proposed by the various State departments of transportation around the Nation, I believe they are justifiable. However, for those projects that are not the product of some type of process at the State level, I cannot speak so favorably. Fortunately, the projects included for Idaho were included only through close consultation with the Idaho Department of Transportation. Most importantly, they were included without imposing the 5-cent gasoline tax increase advocated by some in this Congress.

In any event, it is time to turn more of the surface transportation program over to the States. By and large, this bill will effectively do that.

The State matching requirements of this legislation recognize the difficult financial position of many States by enacting an 80-20 match—80 percent to be provided by the Federal Government, largely through the Highway Trust Fund and 20 percent to be provided by the States. This is a step toward greater responsibility for the States—the 1986 bill provided a 90-10 match—without going to the 60-40 or even 75-25 extremes contained in other proposals, including the President's.

Across America, bridges are beginning to crumble. Along Idaho's principal north/south link, highway U.S. 95, a single bridge near Riggins, ID, connects much of the State's population. Its condition is in serious question, but because of the lack of funds provided for bridge replacement and rehabilitation, it is not slated for action until 1995.

Similar problems exist throughout the Nation and need to be addressed. The conference report provides a large part of the solution by allowing States the flexibility to spend more money on bridges, providing a $16 billion program to replace and rebuild our Nation's bridges, and expanding what has been a very efficient timber bridge program to $7.5 million.

Funding for highways running through national forests and other Federal lands is more than doubled in this bill. This will increase and improve access to our Nation's public lands for millions of Americans and help get timber and other valuable natural resources to the people and businesses that need them. Funding is also increased for Indian reservation roads.

I am most pleased about the inclusion in the conference report of Senator SYMMS' National Recreational Trails Trust Fund Act. I am a cosponsor of this measure and believe it is an important step in enhancing and maintaining the current recreational trails of America, as well as constructing new multiple-use trails through the user fee concept.

The bill has many other important provisions including State design and approval of pavement rehabilitation projects without Federal approval, a repeal of speed limit sanctions on the States and others too numerous to mention here. Suffice it to say that they are all part of what will prove to be a most efficient and effective surface transportation program for our Nation.

Even with my support of the conference report, I must mention a few concerns about the legislation. These include the helmet and seatbelt provisions and long-combination vehicle size freeze contained in the bill. These are significant infringements on the rights

of States to regulate safety within their own borders and I oppose their inclusion in this legislation, as I did when they were included in S. 1204.

In addition, I am disturbed about the conference committee's decision to strike the Private Property Rights Act from the bill. It was included in the Senate approved legislation and would have gone a long way toward assuring the private property owners of America that their livelihoods will not be threatened by the regulators in our bureaucracy. That battle, however, is far from over and will continue to be fought.

Finally, Mr. President, I would once again like to thank Senators MOYNIHAN and SYMMS for their fine leadership on this important legislation and express my strong support for the conference report.

Mr. SANFORD. Madam President, we are obliged by our duties as Senators to bring to the Nation a surface transportation reauthorization bill. The Nation needs this bill. The Nation needs its highways and interstates maintained, it needs to begin construction on its newly planned highways, and it needs its transit systems running.

The infrastructure system of the United States is the greatest in the world, and we should all be proud of that fact. And crafting legislation which authorizes funds to keep this system operating is one of the most important responsibilities of Congress. The surface transportation legislation authorizes the spending of vast sums of money—billions of dollars—which in turn creates jobs for countless individuals in industries ranging from engineering to construction to sales to manufacturing, and so many other fields. The highways, bridges, and transit systems authorized by this bill keep the Nation moving and working. None of us could survive in this modern world without the transportation systems which are the lifetimes to our jobs, to our homes, to the stores, restaurants, and businesses of America. Indeed, our Nation would go nowhere without this system.

The Nation is therefore at the mercy of Congress to bring forth legislation to provide funding for the transportation systems. The issue of equitable funding is critical to our debate on this legislation.

Going into this reauthorization cycle, North Carolina was receiving only 74 cents back for every dollar it put into the highway trust fund—an extreme iniquity. When we first began our debate of this transportation legislation, I was adamant about seeing a better return for North Carolina's dollars. While this bill is not revolutionary in that regard, I believe I have achieved some success. After the enactment of this legislation, North Carolina will be receiving 87.5 cents back for every dollar it sends to the Federal highway trust fund. This is clearly a step in the right direction.

During the debates in the Senate earlier this year, I was very outspoken about the need to change the funding formula for the Federal-aid highway programs. I pointed out the need to move away from the formula used during the interstate construction period, and toward a more equitable formula based on use and maintenance factors. I am disappointed that this legislation does not include such changes in the formula, but I am certain that we have been successful in heightening the donor State issue in both the House and the Senate.

There was a time when it was necessary for some States to receive a larger percent of the trust fund than others as all States were working together to fund the construction of the interstate system. However, the period of interstate construction is over and we are now moving into a new era, one that will focus on maintenance and use. We therefore should not maintain the old funding formula to carryout our new directives. To that end I was successful in adding a provision to the legislation which requires the General Accounting Office to study the surface transportation funding formulas and recommend to Congress a formula which would treat all States equitably. I believe that having an objective body, such as the GAO, study the issue and recommend the necessary changes is the best way to ensure fair formulas are adopted in the future.

I have found that those States which have historically received more per dollar under the interstate construction formula do not want to give up the large returns their States have been receiving. During this highway debate we have all done a very good job watching out for the interests of our States, but have not acted in a manner to benefit the entire United States. We all want a bigger slice of the pie for our State, but there just is not enough pie to go around. We need to base our Federal-aid highway allocations on need, not greed. Therefore, I am hopeful that the GAO study and recommendations will help to eliminate this difficult funding formula debate which tears apart regions, Senators, and the interests of the entire United States.

While I have concerns about this legislation's funding formula, it does contain great measures for the Nation and for North Carolina. The safety features of the bill are enhanced. There is an emphasis on transit systems, which will allow North Carolina to pursue transit planning in both urban and rural areas. And the bill includes an increase in the minimum allocation from 85 to 90 percent.

I will offer my support for this legislation. I believe it is a big step in the right direction for transportation in North Carolina.

Mr. RIEGLE. Madam President, this is a historic juncture in Federal transportation policy. Today, with construction of the Interstate Highway System largely complete and many of our Nation's oldest and largest transit systems upgraded, we are entering a new era. The Intermodal Surface Transportation Efficiency Act of 1991 charts a fresh and forward-looking approach to transportation policy. As a conferee on the bill, I would like to thank my colleagues who participated in the conference for all of their hard work. Furthermore, I would like to commend all of my colleagues for the high degree of cooperation demonstrated between Members on both sides of the aisle which made this major initiative happen. The bill goes a long way toward renewing our Federal commitment toward a strong national transportation infrastructure and improving the state of our economy. This $151 billion package will pump much needed Federal dollars into local economies across the Nation. The timing of this bill couldn't be better—at a time when millions of Americans are feeling the pinch of the recession.

Today we have the opportunity to commit our Nation to a coordinated Federal transportation policy. The transit title will ensure that our communities have the resources necessary to reduce congestion, enhance the mobility of transit-dependent populations, and reduce our dependence on foreign oil. I believe the highway title does a better job than the previous surface transportation program in making sure that all States receive a fair share of Federal dollars. Both the highway and transit dollars are urgently needed in communities across the Nation—such as my home State of Michigan.

Most importantly the bill creates—for the first time—a much needed mechanism to help the Federal Government, States, and localities to look at the big picture. The metropolitan planning provisions will provide a formal mechanism for cities and states to strike an appropriate balance between highways and transit needs. This bill puts decision making into the hands of the States and local communities who best understand their own needs.

The transportation policy we develop will have a direct impact on the quality of life of the American people for years to come. This bill will enhance our economic prosperity and competitiveness, ensure adequate investment in our existing highways, road and transit infrastructure, and decrease the congestion in our cities and on our roadways.

Madam President, I believe this bill will promote the continued development and proper maintenance of our national transportation network, which in turn will improve the quality of life for Americans today and into the next century.

Mr. BURNS. I made a statement yesterday expressing my support for this bill and my appreciation to the bill's managers for their assistance. I would now like to take a few minutes to talk about some of the provisions in this bill which I authored. During Senate consideration of S. 1204, the "Surface Transportation Efficiency Act of 1991," I offered five amendments that were passed unanimously by the Senate. Four of those five amendments are in this bill in one form or another. The fifth, the "Rural Tourism Development Foundation," was dropped from the bill at my request after Congressman SWIFT agreed to include it in a broader tourism bill that will move next year.

The primary thrust of my amendments goes to my goal of revitalizing the economy of rural America through the three T's—tourism, transportation, and telecommunications. Obviously, this bill is primarily a transportation bill. It is a bill that goes beyond the traditional definition of a highway bill and implements a comprehensive transportation infrastructure to support the changing economy in America and in Montana. Specifically, in the area of tourism, a growing segment of rural America's economy, this bill makes some important changes in our transportation policies to provide an infrastructure that will support that growth. The bill emphasizes the need for comprehensive planning that incorporates all modes of transportation and takes into account both the commercial and recreational needs of the traveling public. At my request, that planning effort must specifically include the consideration of recreational travel and tourism and other infrastructure investments that will improve State and local roads that support rural economic growth and tourism.

The important facts is that the planning requirements in this bill are backed with funding. In particular, my amendment to the Federal lands category will allow funds allocated through this category to be spent on roads that are on or provide access to Federal lands. It also makes amenity-related projects such as interpretative signage, parking facilities, and visitor centers eligible for Federal land category funds. These funds will play an important role in the West where large portions of our land and many of our recreational areas are on Federal land. The States be able to tap these funds in order to develop an infrastructure that supports tourism on the county and local level.

I am also pleased that the conference committee adopted my version of the Education and Training Program, a program that provides technical assistance to rural areas through the Rural Technical Assistance Program [RTAP]. Under my amendment, the RTAP Program will develop a tourism and recreational travel technical assistance program to help counties and localities take advantage of the programs in this bill. At least two of the RTAP centers will also provide this same assistance to American Indian Tribal governments thus giving them the opportunity to capitalize on the tourists' interest in the American Indian culture.

There are other important provisions in this bill relating to tourism and recreation, and I want to take a moment to mention Senator SYMMS' Recreational Trails Fund Act. I have been a longtime supporter of Senator SYMMS' efforts to redirect some Federal highway funds to the construction and rehabilitation of back country trails, with the intent of improving motorized access to nonwilderness areas. The recreational trails fund will give those people who buy gas for their snowmobiles, motorbikes, and ATV's a return for the money they are contributing to the highway trust fund. This is an important step forward in improving recreational opportunities to many Americans.

The transportation policy changes and funding increases for surface transportation provided in this program will also provide the economic underpinnings for the Nation to compete in the 21st century global economy. My amendment to require a border crossing study was combined with other provisions in the House and Senate bills into a comprehensive study identifying the infrastructure needed to facilitate trade between the United States, Canada, and Mexico. Since 1980, United States trade with Canada and Mexico has more than doubled and has grown 56 percent faster than our exports to the rest of the world. A cooperative North American economy will require major infrastructure improvements and efficient transfer between rail, highways, waterways, and air freight centers.

The border crossing and infrastructure assessment in this bill will identify projects and transportation policy barriers to North America trade. The Secretary is required within 18 months to investigate and develop priorities and recommendations for rail, highway, water, air freight centers, and border crossings improvements necessary to facilitate trade between the United States, Canada, and Mexico. The investigation would be based on existing and emerging trade corridors and transportation subsystems that are integral in moving goods across our common borders. Trade and transportation corridors are used as a study framework because interregional trade trends to concentrate along favorable routes or preferred modes of transportation that link resources with manufacturers, supply distribution centers, and large consumer markets.

Historically, trade has moved north-south but as national boundaries became fixed, transportation systems in Canada and the United States were developed to move goods along east-west lines. As a result, north-south intermodal connections are lacking, especially in the rural West. The West, according to the University of Montana's Bureau of Economic Reserach, is developing three general trade corridors to accommodate expanding north-south trade. One is the Pacific Coast corridor, stretching from British Columbia to southern California, but largely concentrated between the cities of Vancouver, Seattle, and Portland. Another is the Upper Great Plains, Great Lakes corridor, stretching from Saskatchewan to the upper Midwest region of the United States, but focused between Winnipeg and Minneapolis-St. Paul along the Red River Basin. And of particular interest to me is the third corridor which Larry Swanson of the University of Montana says will develop along the Rocky Mountains.

The State of Montana, and its neighboring States and the Province of Alberta will benefit from a regional assessment for the emerging northern Rocky Mountain trade corridor. This corridor forms a triangle between Edmonton, Alberta, Salt Lake City, and Denver and serves the smaller urban centers and outlying rural areas of Montana, Wyoming, southeastern Utah, and the western edge of the Dakotas. Plans are underway within this corridor to establish a regional public-private partnership to develop the trade corridor based on similar economics, mutual interests in lowering freight costs, and improving access to more global markets. A regional strategy makes sense because the north-south distances between the large urban centers within this corridor are about 1,000 miles apart. Like the 1944 interstate route selection, the decision to upgrade major highway routes requires a regional investment strategy because our states have a highway user fee revenue base about one-fourth the national average and some of the highest State gas taxes in the country.

I would like to insert into the RECORD at this point a letter from the chairman of the Salt Lake County Commission in support of the regional assessment. This letter illustrates how joint border cooperation between the province of Alberta and Montana on the new inland port facility at Shelby has impacted the trade corridor. Opposite of Salt Lake City, is Denver which anchors the east side of the corridor. The State of Colorado is a regional, national, and international transportation hub. The State of Colorado would like to see a transportation study examining the Rocky Mountain corridor and its role in north-south trade movement. Gov. Roy Roemer of Colorado has informed me that he will send a letter to the Secretary of Transportation in support of these studies.

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

SALT LAKE COUNTY, UT,
November 26, 1991.

Hon. CONRAD BURNS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BURNS: The House-Senate conference amendment that directs the Secretary of Transportation to identify infrastructure improvements along existing and emerging North America trade corridors is important not only for Salt Lake County but for state and regional growth in the changing global economy.

Salt Lake County and the Utah Department of Community and Economic Development undertook initial development of the Utah Intermountain Port Authority to serve as a supply and distribution center. Port authority status was sought as a valuable economic development tool because it provides a U.S. customs "port of entry" for goods to enter and exit the commerce of the region and the United States. The Salt Lake port would not provide direct transportation services, but instead work with the public and private sector to expand markets, improve transportation services, and industrial, warehousing and distribution facilities. As envisioned by the County, full development of the port's potential could generate thousands of jobs, enhance small business growth by identifying international marketing niches, and increase Salt Lake's prominence as an international trade center.

The port's feasibility study concluded that "cooperative intermountain regional efforts are essential to identifying and exploiting opportunities to optimize international trade efforts and overseas trade missions." Regional analysis of trade corridors and transportation services will enhance multistate public-private efforts to develop regional trading blocks for the global markets. Interest in developing a regional trade and investment strategy for the emerging Northern Rocky Mountain Trade Corridor is unfolding. This corridor would form a triangle between Edmonton, Alberta, Salt Lake City and Denver and serve the small urban centers and outlying rural areas of Montana, Wyoming, southeastern Utah and the western edge of the Dakotas.

Transportation services such as the recent unprecedented agreements between Alberta-Montana for joint customs inspection and authority for heavy trucks to travel on a 36-mile stretch of I-15 to Shelby, Montana's inland port are already producing local, state, regional and national benefits. The Shelby port provides the Canadian province with the only major rail-highway connection to U.S. domestic markets. The Shelby-Salt Lake connection could result in complimentary marketing strategies to encourage trade development. Those strategies may also include public-private cooperative efforts to assist rural areas along the corridor who now lack access to a broad range of export assistance, lower freight rates and quick and reliable transportation services necessary to compete in the global economy.

I encourage the Secretary of Transportation to include the Salt Lake region in the regional trade corridor studies. In addition, I appreciate your efforts and those of the House and Senate conferees in developing this amendment to the 1991 surface transportation program.

Sincerely,

E. JAMES BRADLEY,
Chairman,
Salt Lake County Commission.

Mr. BURNS. The Secretary of Transportation is also required to assess the adequacy of every border crossing to accommodate increased trade and tourism traffic. The Sweetgrass border crossing that serves the Shelby, MT, port is woefully inadequate on the U.S. side and long truck delays are encouraging trucks to take alternative routes. It is my hope that the Secretary of Transportation could complete the review of this situation within 60 days from enactment of this legislation.

Finally, I would like to mention one last provision that is unrelated to these other matters, but very important to the No. 1 contributor to Montana's economy, the agricultural community. The original Senate bill included my amendment to allow States to waive the commercial drivers license [CDL] requirements included in the Commercial Motor Vehicle Safety Act of 1986 for vehicles used to transport farm supplies from retail dealers to or from a farm, for vehicles used for custom harvesting and for vehicles used in feedlot operations. I am very pleased that the conferees agreed to include an exemption from the CDL requirements for the custom harvesters. These are hardworking people who travel the country harvesting crops for farmers who for one reason or another have not invested in combining equipment. Custom harvesters only operate on a seasonal basis and they primarily use part-time, student labor. This exemption will provide some much needed regulatory relief to the custom harvesters and will alleviate their fears with regard to their labor pool. I am naturally very disappointed that the conferees did not include the farm retailers and feed lot operators in this exemption. I get a real sense that many people up here do not understand the way rural America works. I intend to continue changing and making laws that accommodate rural America and the farming community in particular.

Madam President, overall this is a very good bill for Montana and for the Nation. I have already thanked my colleagues so I won't to go into that again. I will look forward to working with them in the years to come as this program is implemented.

Mr. DOLE. Madam President, when President Bush asked Congress to complete critical surface transportation legislation in 100 days, I do not believe he imagined it would take an additional 166 days to get the job done. However, we are finally here and on the verge of completing action on this historic 6-year bill.

It is equally important that as we close out the 20th century, we do so by completing the interstate and recognizing and honoring the driving force behind the world's largest public works project: President Dwight David Eisenhower. It it appropriate that this legislation include suitable provisions to study and develop a fitting emblem honoring the "Dwight David Eisenhower Interstate System and Defense Highways" to be affixed to all interstate highway signs so that generations of the Nation's travelers will recognize the contribution of the great President from Kansas.

I am also pleased that we were able to craft a bill that takes into account the needs of all States and provides adequate funding and flexibility so that State departments of transportation will be able to meet the unique needs of their own State surface transportation requirements.

This bill is good news for Kansas—for our States infrastructure, for motorists, and most importantly for Kansas jobs. Overall program funding for Kansas is $1.3 billion, up from the 1987–91 program where Kansas received approximately $735 million over the 5-year period. I am also happy that we find ourselves more balanced in the ratio of dollars paid out and dollars received for the highway program. Kansas will receive $1.03 for every dollar expended rather than the 89-cent return of the previous program.

DOLE AMENDMENTS

I am particularly pleased the conferees added three special projects at my direction: Completion of the $48.8 million Hutchinson Bypass project; completion of the $8.6 million west Leavenworth Trafficway; and up to $56.2 million to continue—and hopefully complete—the four-lane expansion effort to Nebraska along U.S. 81. All are important projects to Kansas and need to be completed. I would note for the record that in the bill as printed, U.S. 81 has been mistakenly designated as U.S. 91. I have addressed this in a concurrent resolution to correct this technical error.

Other amendments that I sponsored or supported include commercial drivers license regulatory relief for custom harvesters; relaxed and expanded homebound meal delivery provisions for DOT transportation providers; funding to improve rural intercity to improve rural intercity bus service; and funding to defray the costs of urban mass transit administration bus testing requirements affecting several Kansas small bus manufacturers.

I am also pleased that the conferees provided $33 million in startup funding for several projects that I supported including the Riverton to I-44 project in southeast Kansas; the Oakland Expressway in Topeka; the U.S. 54 interchange at Oliver and Kellogg in Wichita; the interchange along I-435 and Nall Avenue in Overland Park; and the Lawrence East-West Bypass.

Madam President, it is important to recognize that the National Highway System—as called for by the President—will be funded at an adequate level to provide this Nation with a

truly integrated transportation strategy. Secretary of Transportation Sam Skinner and Federal Highway Administrator Tom Larson have done a great job making sure the administrations program was well represented and explained to Senators every step of the way.

Madam President, as we move toward completion of the Eisenhower Interstate, I believe we as a nation have taken a very positive step toward achieving the policy goals this legislation seeks; namely, construction, maintenance, congestion relief, environmental protection, and job creation. I congratulate my colleagues on the conference committee for the good job they have done completing this legislation.

Mr. LAUTENBERG. Madam President, I am pleased to join my colleagues today in supporting the conference report on H.R. 2950, the Intermodal Surface Transportation Efficiency Act of 1991.

At the outset, I again want to commend my good friend and colleague from across the Hudson, Senator MOYNIHAN. His vision and leadership moved this bill through the Senate, and then through conference.

The result is a piece of legislation that is truly responsive to the transportation needs of this country.

I again want to note the efforts of Senator SYMMS. He is leaving the Senate next year. But, he has put a tremendous amount of time and effort into this legislation.

His leadership on behalf of the Western States was crucial to our reaching this point with a bill that makes fundamental changes in the way that we will look at our transportation programs.

This is legislation that we can all be proud of. It is not an extension of the same old highway bills that this Nation has seen for the last 35 years. It is innovative. It is creative. And, it is responsive to the diverse needs of every region of this country.

The cornerstone of this bill is its flexibility. That flexibility is essential if we are going to give States the tools they need to address their transportation needs, and meet national goals.

I say that because, if there is one thing that has become more and more evident over the course of developing the concepts behind this legislation, it is that local actions and national goals are inextricably linked.

Providing better mass transit in New Jersey is not just for the benefit of Newark, Trenton, Camden, or the Hudson waterfront. It helps improve the productivity of a vast work force. It helps our State, and our region, work toward compliance with clean air goals.

Those are national goals and, the nation benefits when we achieve them. But we must achieve them on the local level.

Our bill recognizes that transportation needs around the country are different: Idaho is different from New York; North Dakota is different from New Jersey. Well, even northern New Jersey is different from southern New Jersey.

This legislation takes those differences into account. Through enhanced planning requirements, flexibility of funding, and significant increases in funding, this bill will help all of these areas.

Madam President, I am pleased to note that the conference report includes provisions that I sponsored, to create a comprehensive Intelligent Vehicles-Highways Systems Program, and to freeze the use of longer combination vehicles.

An emphasis on IVHS is absolutely consistent with the overall theme that we have stressed throughout the consideration of this legislation—greater productivity out of existing transportation infrastructure.

With IVHS, based on field tests, we can look to reduce fuel consumption, improve air quality, cut down on the billions of hours wasted each year by Americans stuck in traffic, and help improve productivity.

The conference bill also contains a provision that I sponsored allowing States like New Jersey to get credit for the tremendous amounts of money they invest into toll facilities. This provision is very important to New Jersey, and other States with toll facilities.

Madam President, there are many specific items in this legislation of importance to New Jersey. Funding for needed improvements such as widening of route 21 in Newark; authorization of and funding for the urban core transit project, which will open up mass transit for thousands of commuters.

In June, our Environment and Public Works Committee brought to the Senate a bill that stressed flexibility, mobility, and productivity.

I am proud to report to our colleagues that the bill we brought back from conference retains those fundamental principles.

In the package before us, we have a comprehensive surface transportation bill. It is a plan that can take this country through the 1990's and beyond, into the next century. I urge my colleagues to support it.

Mr. ROBB. Madam President, I rise in support of the Metropolitan Washington Airports Act Amendments of 1991 and in support of their inclusion in the Intermodal Surface Transportation Infrastructure Act.

Congress, in the Metropolitan Washington Airports Act of 1986, authorized the creation of the Airports Authority, and the operation of National and Dulles International Airports under a 50-year lease between the Authority and the Federal Government.

On June 17, 1991, the Supreme Court held unconstitutional the provision of the act that created a Board of Review composed of nine Members of Congress. As a result of this decision, the Authority has been unable to authorize the issuance of bonds needed to continue its Capital Development Program at National and Dulles Airports.

The Metropolitan Washington Airports Act Amendments of 1991 is an important piece of legislation designed to correct the constitutional flaws. The proposed amendments will reconstitute the Board of Review, establish new procedures for approving actions of the Airports Authority, and eliminate the delegation of congressional veto power to the Board. The legislation also includes several relatively minor, technical changes.

SELECTION OF BOARD OR REVIEW

The legislation retains a Board of Review; however, the Authority is directed to reconstitute the Board with nine Members to be selected from lists provided by the President pro tempore of the Senate and the Speaker of the House. Additionally, in response to the issues addressed by the Supreme Court, the legislation makes a number of changes in the requirements for selection to the Board. The bill gives the Airports Authority the right to reject a list and request additional recommendations. The individuals on the lists submitted by the President pro tempore and the Speaker do not have to be Senators or Representatives. They are required to have experience in aviation matters and be frequent users of the Metropolitan Washington Airport. The Airports Authority Board of Directors is given authority to remove members of the Board of Review for cause by a two-thirds vote.

ACTIONS SUBJECT TO REVIEW

The 1986 act requires the Airports Authority to submit to the Board of Review its annual budget, authorization for the issuance of bonds, adoption or revision of the airport master plan, actions on regulations, and appointment of a chief executive officer. The bill adds requirements to submit airport terminal designs, modifications of airport layout, and authorization for disposal of land or the grant of an easement to the Board.

PERIOD OF REVIEW

The amendments modify the 1986 act to end the Board of Review's authority to veto actions submitted by the Airports Authority. Instead, the Airports Authority's Board of Directors will be required to submit specific actions for consideration by the Board of Review which then will make recommendations to the Airports Authority's Board of Directors. If the Airports Authority does not agree with the Board of Review's recommendations, a written report to the Board of Review will be required.

In such cases of disagreement, the bill will require the action to be submitted to the Congress, under a process much like that used for matters relating to the District of Columbia. Congress will then have 60 days to decide whether to disapprove the action. Expedited procedures will be used, debate will be limited, and amendments will not be permitted.

BOARD VACANCIES

The bill includes a provision that until the Airports Authority establishes a new Board of Review, or if at any time the Authority allows more than four vacancies on the Board of Review, it will have no power to take the actions which must be submitted to the Board. This provision will provide a safeguard against the Authority failing to comply with the statutory requirement that it appoints a Board of Review.

CITIZENS ADVISORY COMMITTEE

During the debate on the Airports Authority, local community leaders expressed frustration with the current decisionmaking process that provides few opportunities for citizen participation. The communities directly impacted by National and Dulles operations are concerned with noise and other environmental issues, traffic congestion, and the preservation of the Abingdon Plantation ruins. In response to this request, the Airports Authority will recommend creation of a Citizens Advisory Committee to the Board of Directors during its December 4, 1991, meeting.

Several other airport related issues were brought to my attention during the lengthy debate on how to resolve the Board of Review dilemma, including issues important to workers at the airports. While it was possible to resolve many of the points of dispute raised during consideration of the bill, it was not possible to resolve the concerns articulated very compellingly by some airport employees. I plan to carefully review these employee concerns, along with several other unresolved issues, in the weeks and months ahead.

In closing, allow me to thank those individuals who contributed to the success of this legislation.

My colleague, Senator JOHN WARNER, carried the ball against a mighty defense, through the conference of the highway bill.

Representatives OBERSTAR, MINETA, and HAMMERSCHMIDT supported our objectives throughout the process.

Senator FORD recognized the emergency of the situation and was key to allowing inclusion of the amendments in the surface transportation bill.

Senator HOLLINGS demonstrated his strong leadership by focusing on the objective: Completing the airports' capital development program and restoring National to its once grand status.

Mr. SIMPSON. Madam President, I rise to heartily congratulate the Senate conferees on completing a highway bill before we adjourn for Thanksgiving. That was not a simple accomplishment by any means. The House and Senate bills were as different as one could imagine—different in terms of program length, different in the overall amount of funding and method of distribution of funds, and different in the vision of how this country should address our surface transportation needs for the next 6 years. But you did it. You produced a Senate bill in June, you waited—patiently—for the House to act after the August recess, and then you went to work. You have diligently defended many of the provisions included in the Senate bill and you have represented the needs and consensus of those of us in the Senate so very well. I applaud you.

I have a sense for what you must feel right now. You have been through the ringer for weeks, you have produced a good bill that includes sound, prudent surface transportation policy, and yet most folks just want to know how much money is in it for them. We are all like that. Each of our States have incredible needs—for our roads, as well as for employment. I do not underestimate these needs. Nor do I underestimate the very thoughtful policy direction that this final bill now establishes for this country as we face the coming decade.

The bill fairly reflects the immensity of this country, and the very diverse needs in each of our States. We are a country with urban areas which desperately need traffic congestion relief—HOV lanes, additional traffic lanes, mass transit rail lines, to name but a few. Our rural areas are in tremendous need of road reconstruction and maintenance moneys in order to keep commerce flowing and to keep the local economies vital and productive.

This bill fairly distributes the moneys from the Federal highway trust fund throughout the 50 States. Some States will feel shortchanged. But our Nation's highway program is not a clearinghouse for 50 separate highway departments. Our roads and interstates across this Nation are like the threads of a fabric that is spread across our country. Good interstates, highways, and bridges allow efficient transport and distribution of the industrial goods produced everywhere. Good roads permit the freeflow of goods and services from the producing sectors of the country to the consuming sectors. Efficient transportation systems are vital to a strong economy, and are essential in order to maintain this Nation's productivity.

There is such great concern these days about our domestic policy and agenda. Here is a bill that has been agreed to by the House and Senate, and is wholly endorsed by President Bush, and it speaks directly to the domestic agenda. This is in effect a $153 billion jobs bill. It creates jobs—and these jobs will go forward in turn to spur increased productivity for the taxpayers. What has been accomplished here today can not be underestimated.

There are so many provisions in this bill, I will not comment on my particular thoughts on each one. I do want to express my disappointment that a provision included in the Senate bill which would have protected private property rights was rejected by the House of Representatives. My able good friend and colleague, Senator SYMMS—a true warrior on this bill argued very effectively on the floor of the Senate to codify an executive order which requires Federal agencies to consider the implications of proposed rulemakings on the rights of private property owners. This is a basic and fundamental principle for our citizens. The provision was not covert or misleading—in fact, it was refreshing in its straightforwardness.

Avid environmentalists were concerned that this provision would have placed a higher priority on the protection of private property rights than on the protection of some environmental regulations as they apply to private property. But, if one believes that private property rights are protected by our Constitution, and vital to the strength and integrity of this Nation, then that priority system is surely not out of line. I do sincerely question the motives of those groups which opposed this particular amendment. As a member of the Environment and Public Works Committee, I support many of our Nation's environmental laws and regulations. But this country is gradually allowing a certain mentality to prevail which erodes private property rights—and I fear that along with that will go a glimmering number of other rights.

But, all in all, this is a good bill. I stand ready to cast my vote in support of it. I thank Don Diller, the capable director of the Wyoming Department of Transportation, for his good counsel and assistance during this process. I want to thank Senators BURDICK and MOYNIHAN, Senator CHAFEE, and Senator SYMMS once again for all their good efforts to ensure that the needs of the rural West were addressed. I particularly commend the interepid and persistant Senator PAT MOYNIHAN and the steady and thoughtful Senator JOHN CHAFEE for the tireless hours of negotiations that they put forth in recent weeks to protect the interests of a region of this country that they do not directly represent. Hundreds of staffers have dedicated hours to this bill, but I want to specifically thank Jean Lauver, Steve Shimberg, Taylor Bowlden, Angela Plott, Roy Kienitz, and Jeff Morales for their good efforts and assistance—with special and sincere thanks to Laurie Goodman of my staff. She has been superb and is very effective. A job well done. All around.

SUPPORT OF EMERGING TRADE CORRIDORS PROVISION

Mr. SIMPSON. Madam President, I rise in support of this most important provision authored by my fine colleague, Senator CONRAD BURNS. It requires the Secretary of Transportation to identify existing and emerging trade corridors and transportation subsystems that facilitate trade between the United States, Canada, and Mexico. I am most optimistic that this initiative will provide the necessary foundation for the future success of the North American Free Trade Agreement.

In the next 18 months, the Secretary of Transportation will develop recommendations for the improvement of rail, highway, water, air freight centers, and border crossing facilities to facilitate trade between the United States, Canada, and Mexico. Although this will be a large undertaking, it is a top priority in order to increase our trade between States and our closest foreign neighbors.

My fine State of Wyoming is served primarily by the North American Rocky Mountain corridor which runs through Edmonton, Alberta, Canada, Salt Lake City, and Denver, CO. Canada is the United States' largest export market. Transportation systems—across the board—must be improved to continue and strengthen this valuable relationship. Although most of the trade between the United States and Canada is concentrated in eastern trade corridors, the Rocky Mountain region has seen tremendous growth in the last few years. By concentrating our efforts on expediting trade through transportation alternatives and improvements, exporters will view Canada as a more user friendly market.

We must not neglect to mention the many opportunities that exist on our southern border. Wyoming recorded the greatest percentage increase in trade growth of any State with Mexico in 1990—up 210 percent from the previous year. Because of the increasing importance of Mexico as one of the United States most open markets, concentrating our energy on expanding north-south trade is in our best national interest.

I am optimistic that the findings of this investigation will shed valuable light on the importance of transportation in the expansion of trade between our Canadian and Mexican neighbors. I look forward to working with my friend, the Governor of Wyoming, Mike Sullivan, to help establish a State and Federal strategy to promote interstate and interregional trade, as well as foreign trade. I ask unanimous consent that a letter from Governor Sullivan in support of this issue be printed in the RECORD.

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

OFFICE OF THE GOVERNOR,
Cheyenne, WY, November 26, 1991.

Hon. ALAN SIMPSON,
U.S. Senator, Dirksen Building, Washington, DC.

DEAR ALAN: I am writing to offer my support for the Canadian-Rocky Mountain States-Mexico transportation corridor study to be included in the current proposed federal highway legislation. I believe that this study will result in long term trade benefits. It also represents an excellent opportunity for our offices to work together toward increased trade in Wyoming.

The single largest trading partner for Wyoming manufacturers today is Canada. I know from discussions with your office that we both realize the tremendous growth that the markets in Mexico represent. Greater efficiency in transportation for our region can only mean increased trade with both countries.

We have jointly worked hard to increase trade with Canada in the past and we plan to expand our marketing efforts with your assistance in Mexico. In addition, I am convinced that our state efforts will be bolstered by your work and support of the North American Free Trade Agreement (NAFTA).

These factors, our combined commitment to trade in Canada and Mexico and your support of the NAFTA negotiations and its potential, give us strong reason to see that the transportation corridor study becomes a reality. I encourage the inclusion of the study in highway bill and look forward to working with your office to promote international trade in Wyoming.

With best regards, I am

Very truly yours,

MIKE SULLIVAN,
Governor.

Mr. KOHL. Madam President, I will support the conference report before us. But I do so reluctantly, because I am frankly concerned about voting on this measure based on the limited information we have regarding its content.

We are being asked this morning to consider legislation that represents a 6-year, $151 billion investment in our Nation's highways, transit systems, and infrastructure. It is one of the most important pieces of legislation that the Senate has considered this year. Yet, as of this morning, most of us have not received copies of the conference report, let alone had a chance to review its contents. And I find that very troubling.

We are being asked this morning to give our approval to a measure based only on an explanation of its contents by the managers of the bill and a table we received yesterday showing the expected allocations to each State from each funding category under the highway portion of the bill. While I have no doubts about the accuracy of the former, I am concerned about the accuracy of the latter.

The chart we are being asked to rely on—dated November 26, 1991, at 3:16 a.m.—shows that Wisconsin will receive a total level of funding under the highway portion of this bill of $2,183,390,720. This funding level is broken down as follows: For interstate construction and substitution—$344 million; For interstate maintenance—$231 million; $275 million under the bridge program; $375 million under the National Highway System; $427 million under the Surface Transportation Program; $22.3 million for Federal lands; $70.2 million for congestion and air quality; $20 million under the reimbursement program; $64.5 million under the hold-harmless provision; and $350.5 million for projects.

Now, Madam President, if these numbers in fact represent what Wisconsin will receive over the next 6 years, then the rate of return on Federal gas tax dollars to the State will be approximately 98 percent—and that is a vast improvement from the 81-percent return we have seen over the past 5 years.

However, Madam President, I am not entirely confident that these numbers in fact represents what Wisconsin will receive over the next 6 years. For one thing, this chart includes $2.5 billion in funding that we simply do not have. And it is less than clear that we have addressed this $2.5 billion shortfall and if so, how. I understand that the managers of the bill have said that it is their intent, if necessary, to take an across-the-board cut in highway program spending to correct the problem. I must say that I would have preferred to have had this issue definitively addressed and reflected in new charts before being asked to vote on this measure.

Second, Madam President, we are being asked to assume that the legislative language contained in the conference report codifies the intent of this chart. Now I know that this is not the first time that we have been asked to vote on a measure without the benefit of legislative language. But just because we have done so before does not make the practice any more acceptable. I would have preferred to see us delay this debate to allow time to review the language. But there was clearly not sufficient support within either party to withhold consideration of this measure until some time next week.

So, Madam President, we are being asked this afternoon to make a judgment call on this bill based on what we know today. And, in my mind, it is a close call.

If I thought that voting against this conference report here today would result in a better bill ultimately, I would be inclined to do so. Because there are significant flaws in this bill. I am very disturbed by the conference committee's decision to create a reimbursement program—not contained in either the House or Senate bill—that provides a windfall for donee States like New York. I am very disappointed that members of the conference committee chose to increase—not decrease—the level of funding for demonstration projects. On this point, I am extremely unhappy with the conference commit-

tee's decision to provide $350 million of Wisconsin's allocation under the project category because it suggests that the Wisconsin delegation requested this level of funding. Nothing could be further from the truth. With one $1.5 million exception, we had no demonstration projects in the House bill. We did not request demonstration projects. We asked only that Wisconsin be treated equitably under the bill. And unfortunately, the conference committee chose ultimately to provide this equity payment under the project category rather than the hold-harmless category where it had been included earlier.

But, Madam President, I am not at all sure that this measure would improve demonstrably should it be sent back to the conference committee. Sadly, there is widespread support for the two programs I find objectionable—the reimbursement program and demonstration projects. I suspect, therefore, that the defeat of this conference report here today would sadly not accomplish a great deal.

There is no doubt, Madam President, that this measure is a vast improvement over current law—not just for Wisconsin but for the country as a whole. It offers needed flexibility. It rewards planning. It encourages mass transit. It reduces the disparity between donee and donor States. And it reshapes the direction of Federal transportation policy to recognize the emerging needs and demands of America in the postinterstate era. For that reason, Madam President, despite my lingering concerns over the process by which we have been asked to consider this measure, I will support this conference report.

Mr. HATFIELD. Madam President, I rise today to support the surface transportation conference report that is now before the Senate. I first want to commend the conferees, especially Senators MOYNIHAN and SYMMS, who labored for so many weeks and months on this vital legislation. Speaking for my State of Oregon, I can say that we will see a significant improvement over prior law and I appreciate the efforts of the conferees in bringing this about.

This legislation puts a healthy emphasis on mass transit projects. By establishing more equitable balance between the match ratios offered for transit and those offered for highways, this new law will make mass transit a more appealing option for transportation planning groups. Removing this inequity eliminates a blinder on the ability of planners to take positive steps to eliminate transportation problems.

For most Americans, the emerging transportation crisis in this country is symbolized by the increasing number of traffic jams, potholes, and delays in both urban and suburban areas. Oregonians are no less afflicted by these growing problems as those in the rest of the Nation. As frustrating as they are, they represent only the tip of the iceberg.

Many do not realize the true importance of our tremendous network of roads and bridges to our economy, national security and way of life. The health of our citizens, the education of our children, the movement of our perishable food and access to employment depend upon a reliable and efficient transportation network.

By allowing our infrastructure to deteriorate, we are putting our Nation at risk. Yesterday, Oregonians were given a small but telling reminder of our potential problems when a section of the Santiam Bridge on Interstate 5 came loose and fell into the river below. I-5 is a major north-south corridor in the Western part of this country. Thankfully, no one was hurt. But now the southbound lanes of I-5 are cut down to one lane. Truck traffic will continue to be detoured through the small town of Jefferson. This will translate into a negative economic impact that, while small, will nonetheless echo through a number of Oregon communities.

I should point out that refurbishment of this bridge was prioritized for funding in the fiscal year 1991 transportation appropriations bill but was not chosen for funding by officials at the Federal Highway Administration, despite its structural rating of 2 on a scale of 100. This underscores the fact that resources are inadequate to meet the increasing need for infrastructure repairs.

At present funding levels, three-quarters of Oregon's roads will be in poor condition by the year 2005. I am pleased to say that Oregon will increase its funding levels significantly under the bill before the Senate today. Oregon's donor status is significantly minimized under this legislation. Oregon is on line to receive $1.406 billion over the life of this legislation, which translates into an increase of $110 million per year under this bill when compared to the prior highway law.

All of this does not include funds secured for the westside light rail project in Portland, OR. This is a project that is of supreme importance to the transportation needs of Oregon. It is appropriate to thank Senators CRANSTON and D'AMATO for their help in making this project a reality. I must also thank officials at the Tri-County Metropolitan Transportation District of Oregon for their continuing tireless efforts toward completion of this project.

I would also like to take this opportunity to recognize the good efforts of the Oregon Department of Transportation in this legislation. The Scenic Highways Program included in this legislation, and sheparded by the very able Senator from Rhode Island, Senator CHAFEE was initiated in great measure from the efforts of the Oregon transportation officials. Funds for innercity bus programs are also included in this bill thanks in large part to the good efforts of Oregon Department of Transportation.

Madam President, we all take tremendous pride in our Nation's wealth and freedom. But the status of a superpower cannot be claimed by a nation which consistently ignores the long-term needs of its population. We must begin to rebuild this country and if possible, learn a lesson from the problems we see now in the Soviet Union. Very real threats to our quality of life and national security are created by the deterioration of our infrastructure.

Again, I compliment the conferees for their efforts and look forward to following the beneficial effects of this important legislation as moneys are appropriated.

Mr. WIRTH. Madam President, I support the conference report we are considering today and would like to take this opportunity to thank Senator MOYNIHAN and his colleagues on the Environment and Public Works Committee for the leadership they displayed in producing this legislation.

With the completion of the Interstate Highway System, it is important that we reevaluate our transportation system. Now that the central goal of finishing our highway system is largely accomplished, we need a transportation bill that provides the flexibility for States to support building new roads, maintaining existing ones, or increase our mass transit efforts. We need to produce a package that provides for the roads and bridges that we need and also helps support other elements of the transportation infrastructure that is so important to our economy.

The bill before us today does provides greater flexibility. At a time when we need to reevaluate our transportation network and priorities, we have produced legislation that will help the States do so. I believe the legislation is forward looking at a time when we could easily have stuck to the type of programs that have been popular and, in many ways successful, in the past.

Passage of this legislation will also allow many important projects to go forward, avoiding the possibility of further unemployment during an economic slowdown. And in the long term, it will allow us to make important investments in our future economic growth by promoting more efficient transportation of people and goods. I am pleased to support the surface transportation legislation and look forward to its passage.

Mr. MACK. Madam President, I strongly oppose the final version of H.R. 2950, the Surface Transportation Act.

Dividing up gas tax dollars has become a political game. Politics has replaced funding formulas. The political game played in the transportation bill

is appalling. This is unfair. This is wrong.

The Senators in control of the bill, mostly from low growth States, have taken the money—Florida's money—and run. Jesse James would have been proud.

I encourage my colleagues to closely study the final bill, if it ever arrives here in the Senate Chamber before the vote today, and look at the $6.48 billion being divided up by members of the Environment and Public Works Committees. In addition, I still fail to see the need for Federal reimbursement for States who built their roads prior to the creation of the interstate system. I find it incredible that Florida taxpayers are paying for roads which New Jersey and New York built, operate, and have collected tolls on for 30 years.

Congress' failure to enact new highway formulas leaves will result in further disparity among the States. The disparity is so great even the minimum allocation program will not be able to make up the difference.

We had an opportunity to create a new funding formula. An equitable formula. A fair formula for all 50 States. Yet we are taking the easy way out by not addressing the issue of a new formula. We are legislating the status quo, perpetuating our outdated allocation formulas for another 6 years. By doing this, we guarantee to be revisiting this issue once again in 1997.

The fight is over Florida's fair share. It is wrong to expect Florida taxpayers to foot the bill for highway needs of other States when we have our priorities. Thousands of people are moving to Florida every week to enjoy our sunshine and admire our State's natural beauty. Yet, Congress refuses to understand that we need to improve our highways to keep pace with our tremendous growth.

Madam President, Congress has failed here today. We could have corrected the inequities of the present system. Congress chose not to act.

Mr. HOLLINGS. Madam President, after careful deliberation, I want to express my opposition to the highway conference report today. The reasons are numerous. But before I get into the many reasons why the actual legislation is unacceptable, let be begin with the actual process by which this bill was conferenced and brought back to the Senate for consideration.

It is utterly ridiculous for the managers of this bill to insist that the Members of the Senate vote on major legislation impacting our States when we have had absolutely no time to digest the substance of the conference. Oh sure, we've all been handed charts that reflect as many different scenarios as there are charts floating around. Every third hour, there has been a new chart with new numbers magically spun from air.

Now, we are expected to take one of these charts at face value without seeing the bill language the numbers allegedly represent. This legislation is much too important to ramrod through without allowing sufficient time to ensure that the numbers are real. I for one do not believe they are realistic, which possibly explains why it is being pushed through in such a frantic manner.

Let me explain why I do not believe the charts to be accurate and why I oppose this bill. Of course, I welcome the managers of the bill to produce evidence which proves the contrary. But they cannot. They can only produce charts that say what they want them to say.

Let me begin with the fact that South Carolina is a donor State. Along with 15 other States, we have been paying into the highway trust fund for the last 30 years substantially more than we have been receiving for road projects. We were told we must accept this designation as donor State for the good of the country, that less populous States in the West would not generate enough revenue to pay for the elaborate Interstate System which connects this country from coast to coast and provides us with an efficient means of transporting goods. We accept that designation for the good of the country.

But, Madam President, the Interstate System is now all but completed, and it is high time and only fair that the formula be changed to reflect that fact. However, the managers of this bill have not seen fit to do so. They acknowledge the inequity of the current formula which has provided some donor States as little as 60 cents return on the dollar at times while providing other States $5 or more return on the dollar at times. Yet the committee has refused to do the right think, the fair thing, which would be to reform this erroneous formula.

The latest charts indicate that South Carolina will receive 93 cents on the dollar. I believe this amount to be grossly inflated. First, this amount is based on a drawdown of the current trust fund, which has over $16 billion. I do not believe this will happen, as I will explain later. Second, this same chart indicates that South Carolina received an average of 87 cents on the dollar over the past 5 years. That is definitely overestimated. South Carolina has received approximately 77 cents on the dollar during the past 5 years. It is logical to assume that if one column is inflated to present a rosy picture then the other column is inflated.

Third, there is a $2.5 billion shortfall. According to the last chart, the total is $114.7 billion although the bill is supposed to be approximately $112 billion. A reduction of $2.5 billion will have to be found somewhere, and most discussions indicate that it will come in the form of an across-the-board cut of approximately 2.3 percent.

Fourth, current law requires that funding for specific earmarks be offset by a reduction in that State's minimum allocation. However, the chart that has been circulated by the committee indicates that a State will receive its specific earmarked projects in addition to the minimum allocation funds. Although the charts imply that current law will be changed, I have seen no bill language tonight which supports this contention.

Fifth, the last chart indicates that South Carolina will receive $54 million in projects. However, we only received $32 million in projects in the House bill and according to charts on the House side, South Carolina was only receiving $24 million in projects after cuts during the conference. So the numbers just do not add up.

Madam President, I have been in contact with the highway department in the State. After trying to work with the numerous charts that are floating around and after many discussions with them, it is my belief that, at best, South Carolina will receive 82.5 percent of the money it pays into the trust fund—at best, 82.5 percent.

South Carolina is a growth State, a State dependent on highways to move goods to and from its ports and dependent on highways to facilitate its tourism industry. Yet, we cannot replace a $400 million bridge that links two sections of Charleston. Replacement of this bridge is on the national priority list but, to date, we have not received any funding.

We have a section of interstate in the northern part of the State that carries more trucks per mile than any other interstate in the United States. We do not have the funding to complete a bypass around Greenville to increase safety and reduce the gridlock in the city. Traffic to the beaches of the Grand Strand is backed up for hours during spring and summer. And the day before Hurricane Hugo ripped through South Carolina, the people of the Grand Strand area were told to stay home and bunker down because it would take them over 8 hours to leave the coastal area because the highways could not handle the traffic. It was safer for them to weather the worst storm in U.S. history than to be trapped in the gridlock of the several inadequate roads which head inland.

Yet, despite these crying needs, South Carolina will get, at best, only 82 cents return on the dollar.

I have named specific projects desperately needed in my State. Well Madam President, Let's look at how South Carolina faired in the projects section of the conference report. The House bill provided South Carolina only a $16.8 million earmark to fund our $400 million bridge in Charleston. And a meager $4.2 million was earmarked to assist in constructing the Greenville Connector. All totaled,

South Carolina received only $32 million in specific earmarks on needed projects in the State. That amount was reduced to $24 million in conference.

The catch, however, Madam President, is that South Carolina will have to pay over $200 million into the trust fund as a result of the 2½ cents gas tax extension. The committee calls it an extension, I call it a tax increase because if we were honest with the American people we would remove this 2½ cents tax at the end of next year as we promised, and we would spend the billions that are already sitting in the trust fund being misspent for deficit reduction.

So the bottom line is that if I voted for this bill, I would basically be voting for the drivers of South Carolina to pay over $200 million into the trust fund in exchange for $24 million in projects. Let me put this in a sharper perspective. This same 2½ cents tax will provide over $900 million in highway projects for Pennsylvania for projects like the Ambridge Bridge, upgrading U.S. 220, constructing truck lanes on U.S. 219, various projects in Aliquippa, widening U.S. 15, Pennsylvania industrial park access in Washington County, U.S. Route 219 Meyersdale Bypass, U.S. Route 22 improvements in Monroeville, Route 33 extension, and the list goes on and on and on and on like a who's who list in highway construction. This same 2½ cents tax will provide Illinois with over 55 projects costing over $400 million. New York stands to gain over $500 million in mass transit and highway projects from specific earmarks which are to be paid for with the 2½ cents tax.

Madam President, President Bush originally indicated that he would veto this bill if it contained a tax increase and a significant number of demonstration projects. Like everything else dealing with the economy, he is flip-flopping on his position because this bill is now being sold as a jobs bill. Well, I am not flip-flopping. I agree that we need a highway bill, but I am not going to support a bill that places a fat additional tax on the people of South Carolina when over $16 billion is sitting in the highway and mass transit trust funds already, and it is not going to be spent.

When is the House proposing and the Senate conferees and administration accepting this 2½ cents tax increase if we already have over $16 billion in the trust fund? Well the junior Senator from Texas has expounded upon the fraudulent practices of the past two administrations and of Congress when he noted that trust fund surpluses are "already spent." Senator GRAMM made this argument with respect to the unemployment trust fund, and I quote his exact statement:

> Let me say that we are going to have Members here who will hold up a chart that shows all this money that we are supposed to have in this unemployment trust fund. But let me note that we have already spent that money on something else and now we want to spend it again.

The same argument is being made with regards to the highway trust fund. The Treasury has already borrowed and spent every dime of the $16 billion on the deficit. Once again, there is no trust and there is no fund. Now if the Government wants to spend more on highways, it has to raise the gasoline tax because the administration and a majority of the House and the Senate agreed last year that the trust fund would be used for deficit reduction.

Basically, we are taxing motorists twice while forcing them to drive on submarginal highways. I adamantly opposed the budget deal last year because of the shennanagins involved. And I oppose this bill because it carries on that ludicrous tradition of double taxation which has emerged from the budget deal—first unemployment benefits, now the highway bill—and it will continue. The managers of the bill know it will continue. That is why they used the trust fund to inflate the amount States will receive in funding, yet when it comes to specific projects, they insist on a gas tax. The shennanagins continue.

Worse, Madam President, this bill will tax the motorists of South Carolina twice with the new funds going to special projects in Pennsylvania, New York, New Jersey, and Illinois. The junior Senator from New Jersey stated earlier tonight that people are "begging for work" and this bill will bring jobs. Well, Mr. President, I am not going to vote for a bill that further taxes the drivers of South Carolina to build highways and create jobs in Pennsylvania, New York, New Jersey, and Illinois. I am not going to do it.

South Carolina has lost over $660 million to the trust fund since becoming a donor State. This bill will make us No. 48 in funding, and we will lose over an additional $321 million into the trust fund over the next 6 years. South Carolina would benefit far more by putting a 2½ cents tax on gasoline at the State level. At least then, the money would be spent on roads in Greenville, Charleston, and the Grand Strand and not in Long Island, NY, or Philadelphia, PA, or Chicago, IL. At least then, the jobs that would be created as a result of the tax would be in South Carolina and not in Beaver County, PA, or Utica, NY, or Williamson County, IL. Furthermore, the State would not have to levy an additional State tax to fulfill the match requirement necessary to receive the very money it will send to the Federal trust fund.

Let me mention quickly that I am listed as a conferee on the highway bill; however, I am a conferee only on those issues which are within the jurisdiction of the Commerce Committee, such as motor carrier issues, high speed ground transportation, and highway safety. I could not participate on those issues addressing demonstration projects and formula funding.

On that note, Madam President, I would like to comment on one final issue in the conference. At first it was very difficult to understand why the Senate, which had zero demonstration projects, would accept the 450-plus projects which were in the House bill plus the 2½ cents tax increase that came with the projects. It appears that a compromise was reached in which the demonstration projects were accepted in exchange for a $4 billion reimbursement proposal for those States which built highways prior to the Interstate Act of 1956. Interestingly, there are only six States that actually benefit from this $4 billion proposal: New York, Pennsylvania, New Jersey, Illinois, Massachusetts, and Connecticut. It is interesting that the very States that receive the vast majority of demonstration projects are the States that benefit most from the $4 billion reimbursement proposal. That is a deal they could not refuse in conference. However, Madam President, that is a deal I will not accept here on the Senate floor.

Mr. SPECTER. Madam President, I am pleased to support the conference report to the Surface Transportation Act. This legislation is a significant accomplishment that will greatly assist in providing our Nation with a strong infrastructure into the next century.

In the short term, this legislation will assist in the development of new jobs and retention of existing jobs through new construction and maintenance of our Nation's infrastructure. While highway, bridge, and transit construction is not a panacea for economic recovery of our Nation's economy, this legislation will ensure job growth in the construction trades. In the long term, it will guarantee that our county will continue to advance interstate commerce of goods, which has made this country strong.

The bill, while maintaining the needs for new construction of our highway networks, advances new technology and innovative approaches to resolving this Nation's transportation needs. In this regard, the bill greatly advances the use of our mass transit systems. The bill increases the amount of funds to our Nation's transit systems while providing added flexibility to State and local authorities in using these funds most effectively.

Madam President, during consideration by the Senate of its bill, I offered an amendment to remove the transportation trust funds from the unified budget. Having the trust funds off-budget would remove the opportunity to use these dedicated funds to mask the actual size of the Federal deficit and therefore allow for their expendi-

ture. The conference report, while not removing the trust funds from the unified budget, does allow for a greater use of the funds contained in the trust fund. However, it remains the belief of this Senator, Madam President, that only through accurate accounting of the trust funds will the public be ensured of the proper use of these funds.

The conference report will greatly enhance Federal transportation programs in Pennsylvania. The Commonwealth, like other States in the East, suffer from a decaying infrastructure. Its highways, bridges, and transit facilities demand major repair or reconstruction to maintain acceptable service levels. This bill will allow the Pennsylvania Department of Transportation to implement its 12-year plan for construction projects and guarantee a sufficient level of maintenance of the existing system.

Madam President, this bill contains excellent results for Pennsylvania. Under the terms of the bill, Pennsylvania's annual share of Federal transportation funds will rise from approximately $634 million annually to $944 million. In turn, this translates to a return of $1.27 on every $1 contributed to the trust fund by Pennsylvanians.

Further, the bill contains a number of important highway and transit demonstration projects. The Pennsylvania House of Representatives' delegation did an excellent job in providing projects that represent the needs of Pennsylvanians across the Commonwealth. Each of these projects for Pennsylvania has merit and is worthy of this conference report. In fact, the majority of these projects are within the Pennsylvania Department of Transportation's 12-year plan for construction, as testament to the value and importance of these projects. In turn, I am pleased that the Senate conferees recognized the importance of these projects to Pennsylvania by accepting their inclusion in this report.

Madam President, I cannot discuss the value of this legislation without recognizing the efforts by Representative BUD SHUSTER of Pennsylvania and the other Pennsylvania House Members who served as conferees. Their efforts have produced a bill which is critical to economic future of Pennsylvania and the Nation.

Mr. WELLSTONE. Madam President, I rise to support the conference report on the Surface Transportation Efficiency Act.

To begin with, I wish to thank all of the conferees for completing action on this legislation. Like many of my colleagues, I was opposed to completing this legislative session without achieving final action on a surface transportation bill.

This is landmark legislation, which makes bold strides in positive new directions for transportation, environmental, economic development, and energy policy. This legislation provides important funds for addressing these vital national concerns.

When we talk about energy, we cannot ignore the impact of our dependency on the automobile. This is the root cause of our Nation's dependency on foreign sources of oil—but for many people there are no choices, no alternatives, to the automobile. This legislation will allow States and cities the flexibility to begin developing and investing in alternative transportation choices, and hopefully begin to provide the many people who are now dependent upon the automobile, as their only means of transportation, with some real alternatives.

As the Congress recognized in passing the Clean Air Act last year, if we seek to improve the quality of our environment—to ensure that the air we all breath does not jeopardize the health of the elderly, our children, and others vulnerable to air pollution—then, we must address the urban haze which engulfs America's cities. This haze is produced by the tailpipes of our trucks, buses, and automobiles. This legislation will complement and build upon the initiatives of the Clean Air Act to support new, less polluting vehicles and modes of urban transportation.

When we discuss economic development, there can be no question that one of the immediate problems undermining the Nation's economy is our deteriorating infrastructure, particularly our roads. We can no longer afford to ignore the fact that our roads and bridges are simply falling apart—this is an urgent problem for all Minnesotans, urban and rural, as well as the entire Nation. This legislation represents a major investment in rebuilding Minnesota's, and our Nation's, critical transportation infrastructure.

Our roads, bridges, and transit systems are critical to other factors, such as personal mobility and our sense of freedom, which are sometimes not adequately recognized. As I reviewed the final Surface Transportation Act, I felt there were several particular concerns which needed to be addressed:

First, the transit needs of our farms and rural communities: Keeping our agricultural products accessible to domestic and international markets through an efficient transportation system—including completing and maintaining the interstate highway system—and providing increased mobility for rural residents.

Second, the transportation needs of urban commuters and businesses: Reducing congestion and the growing length of urban commuting, and providing efficient and reliable transportation for our factories and businesses.

Third, the mobility problems of the poor, elderly, and disabled: More and more people today are finding themselves trapped in their homes unable to enjoy basic freedom of movement.

I supported the legislation passed by the Senate earlier this year because I believed it addressed each of these concerns. In reviewing the House-Senate conference agreement, I conclude that it also succeeds in meeting these critical needs.

This legislation also addresses some issues of particular concerns to Minnesotans. Minnesota will receive nearly $2 billion in transportation funds under this 6-year program. This level of funding means that Minnesota will receive $1.13 for every dollar it pays in Federal highway taxes. Minnesota will not be a donor State.

Many critical Minnesota transportation programs will be authorized by this legislation. It will ensure completion of several projects including the approaches to the Bloomington Ferry Bridge, construction of Hiawatha Avenue, Highway 212, Forest Highway 11, and others.

This legislation will also help address the critical employment needs of Minnesotans. According to estimates by the State's Department of Transportation, the transportation projects authorized by this bill will provide nearly 15,000 jobs for Minnesotans.

In conclusion, Madam President, I wish to commend the extraordinary work of my distinguished colleague from New York, Senator MOYNIHAN. It was his sense of vision which is reflected in the many progressive elements of this legislation. I also wish to recognize the work of the senior Senator from Minnesota, Senator DURENBERGER. His efforts were critical in formulating both the national policies of this legislation as well as ensuring that Minnesota's particular concerns were addressed. Finally, I wish to thank all of the House-Senate conferees, particularly Representative JIM OBERSTAR, for their long and hard work on this legislation.

Mr. LIEBERMAN. Madam President, I would like to take a few moments to respond to the complaint raised by Senator GRAHAM earlier today about the funds Connecticut will receive under this bill when compared to other States, particularly Alabama.

Madam President, there are two basic problems with looking at simply the percentage of money that a State gives through gas taxes to the highway fund and comparing it with the percentage a State gets back. First, that approach ignores the true needs of individual States and the Nation as a whole. Second, it stands in stark contrast to how we allocate Federal money more generally across the board.

At present, we allocate Federal spending for housing, social welfare, defense, agriculture, and every other purpose of Government on the basis of perceived needs and the appropriateness of governmental support on a national basis. That is a deliberative, and

in many ways, a painful process. But after all, it seems to have served this Nation pretty well for over 200 years now.

Madam President, if we applied the philosophy espoused by the Senator from Florida to money from the highway trust fund, let's apply it across the board. That would mean that between fiscal years 1981 and 1988, if each State's share of allocable Federal expenditures—not adjusting for inflation—were equal to its share of tax burden, Alabama would have received $23.019 billion less, Florida would have received $42.325 billion less, South Carolina would have received $14.159 billion less, and Virginia would have received $72.380 billion less.

What impact does such an enormous fiscal stimulus have on these States? For one, it allows them to cut State taxes. The nonpartisan Advisory Commission on Intergovernmental Relations [ACIR] measures relative tax capacity and tax effort. According to ACIR data for 1986, Florida has a tax capacity of 105—this means 5 percent greater than the national average—but a tax effort of just 77—23 percent below the national average. Florida has one of the lowest tax efforts in the country. Missouri has a tax capacity of 93, but a tax effort of 82. Virginia has a tax capacity of 101, but a tax effort of just 85.

I wonder if Senators from the highway trust fund donor States would support the principle of a dollar-back-forever-dollar-in when it comes to all Federal taxes? It's a logical extension of their argument.

One additional point, Madam President. Senators mistakenly argue that per capita income is the only measure of a State's fiscal capacity. That is plain wrong. The ACIR has studied this issue for 30 years. Per capita income is one measure of—but not a substitute for—fiscal capacity. Part of Texas' fiscal capacity, for instance, is the severance tax the State imposes on oil and gas. This is a wonderful tax because it is exported out of the State and borne by consumers elsewhere. Because the severance tax is such a revenue-raiser for Texas, its capacity is 104 and its effort just 79.

Per capita income is a relatively meaningless figure unless one also factors in cost of living. People in my State of Connecticut earn more because they have to pay more to live. If anything, States such as Connecticut that have higher per capita incomes are the ones treated unfairly. We have a national poverty threshold. People in my State above the threshold can be considerably worse off than people below the threshold in the rural South, because of the high cost of living in Connecticut.

I think, Madam President, my friends from so-called donor States ought to be apprised of these facts.

Mr. SEYMOUR. Madam President, today I rise to comment on and support the conference report to the Intermodal Surface Transportation Efficiency Act of 1991.

Simply put, this is a good bill for California. It addresses a broad range of issues vital to the health of our Nation's transportation and economic infrastructure, and integrates a much-needed flexibility to the process.

It is not all that we had hoped and worked for—namely, the funding formulas continue to be skewed to the detriment of the donor states—but it is a marked improvement over previous surface transportation bills.

I want to commend Senators SYMMS and MOYNIHAN for their tireless efforts to bring this $151 billion transportation legislation to the floor of the Senate. What began on March 6 of this year with the President's 100-day challenge is now about to be voted on and sent to the President for his signature.

Madam President, this is a jobs bill, and it will give our ailing economy a needed boost. Moreover, it will be instrumental as States move to address local and regional transportation needs. We are now moving beyond the superhighways phase in our Nation's transportation program. Anyone who has observed this debate has witnessed the emergence of a common theme: Our Nation's transportation policy stands at a crossroads. The Interstate System is largely complete. This bill allows us to turn our attention to the very serious problems of local gridlock, clean air, and the development of alternative modes of transportation.

With this task—this first phase—completed, we now undertake the next phase in the process: Making the current system work to its maximum potential. Let's start moving people, but not just across State lines or over vast distances. Rather, we must focus our attention and priorities to the growing needs of congested communities, and put the choice of how we are going to address these problems back into the hands of the local decisionmakers, the States and local governments.

In terms of funding, this bill represents an unprecedented step toward reducing my State's role as a donor State. Of the $151 billion in the overall bill for both highway and transit programs, California's share will be over $15 billion, more than 10 percent of the bill total. And in terms of jobs, when you consider that $1 billion in transportation funds will generate approximately 52,000 jobs, one cannot dispute that this is a needed stimulant for California's stagnant economy.

Madam President, all of the donor States worked very hard to reverse the inequities of previous transportation bills to ensure that our States receive a more equitable return on the funds we pay into the highway trust fund. As a rule of thumb, California contributes 11 percent of all funds in the highway trust fund. Previously, California received less than 9 percent of its contributions in the form of apportionments. This new law will begin to address this longstanding imbalance between funds received for transportation and our contributions. This is a good first step. More action will be required, and I can assure all Members of the body that the debate will be joined once again in the coming years.

One aspect of this bill that cannot be overlooked is the flexibility it affords States and local decisionmakers. Accordingly, States and local jurisdictions will now be empowered to make better and more cost-effective transportation decisions, more so than at any other time in the history of this Nation's transportation policy.

Another feature recognizes the critical need to begin addressing the serious congestion and air quality problems in our urban areas. I am pleased the bill before us provides $6 billion for congestion and air quality mitigation. California's share in this important fund is $835 million. My State's work force spends a growing portion of its day in traffic, hindering productivity and contributing to decreasing air quality. During peak hours, some 6,000 miles of California's main roads are at a virtual standstill. This situation is repeated in numerous States; no major urban center is immune from gridlock and its associated consequences.

The provisions in this conference report will help local decisionmakers mold a transportation program that is consistent with our overriding goals to improve air quality and to avoid the terrible losses in productivity in my State owing to the millions of hours lost in gridlock.

This bill will stimulate greater private investment in public transportation through provisions that encourage public-private partnerships. To my knowledge, no level of government has resources sufficient to meet all of its transportation and infrastructure needs. This new partnership will help bridge the gap between demand and our ability to pay.

Finally, this bill's $31.5 billion transit title is particularly strong, and I commend the conferees for responding to my concerns regarding California's transit needs. I want to point out that this bill's strong support for Los Angeles, Bay Area, Sacramento, and other new-start projects is especially important to their efforts to put into place cost-effective, environmentally sound modes of transportation.

On one final note, I want to comment on that aspect of the debate that has overshadowed virtually everything else. I am speaking of course of the donor state versus recipient state situation. Madam President, my friend from Virginia, Senator WARNER, indicated the other day that this entire debate had become a battle of the charts. In fact, it has been my experience that

just when you thought you knew what was happening, a different chart would surface, and every Member would scramble to see who would be the winners or losers.

Clearly, the one determinant or bottom line driving every Member's decision on this bill will be dollars, pure and simple. To that, I hope all Members of this body will recall that lost behind these charts is the fact that this bill contains historic changes in public policy that will impact our Nation's transportation system long after this debate and the ever-present charts have been forgotten.

Mr. LEVIN. Mr. President, while this conference report represents a step forward for Michigan and some other donor States, it is still not equitable. It is an improvement over what we've gotten in the past, but Michigan is still shortchanged by about $200 million. Furthermore, we are prevented from improving our return with discretionary funding.

This bill ends some of the highway robbery, but too much unfairness remains for about 20 States, including Michigan. I cannot give my approval to a bill that will simply rob us less. Under this bill, Michigan will go from an 80 percent return to an 85 percent return while other States will have a 200 percent and higher return.

To Michigan's detriment, too much money will still be distributed based on the same antiquated formulas and gimmickery. On principle, I cannot support it.

Mr. BIDEN. I will vote for the highway bill conference report. As the comments of several of my colleagues made clear, there are improvements that some of us wish had been included in the conference report which were not. But on the whole, the bill that will be sent to the President reflects a good balance of the dozens of interests that had to be taken into account.

For each of our States, the highway bill allocates funds that are crucial for the economy. For Delaware, the conference agreement will result in nearly $450 million in highway and mass transit funding over the next 6 years. That expansion of support for Delaware's infrastructure is important up and down the State. From poultry farmers in Kent and Sussex Counties to auto workers in New Castle County, a solid road system is vital to keeping costs down and markets accessible.

But this bill is about more than roads. It is transportation legislation in a broader sense of the word. It includes important provisions to address the pollution problems from transportation that afflict many of our Nation's cities. The bill provides stronger support for alternatives to single occupancy cars, particularly mass transit. The bill allows for greater flexibility by States in determining how best to meet their transportation needs.

It must also be recognized that despite the tremendous sums in this bill, $115 billion in total, our Nation's transportation system will remain under tremendous pressures. Demands on our Nation's roadways will not abate. As welcome as this bill is, I have no doubt we will have to continue to look for ways to meet those rising demands in ways aside from adding new lanes.

This bill does much more than previous law to encourage and reward innovative approaches to transportation. Now it will be up to State and local governments to use that authority to the greatest extent possible.

I commend the Senator from New York [Mr. MOYNIHAN] for his leadership on this massive bill, and the other conferees for their efforts in resolving the differences in the House and Senate bills in time prevent disruption to State transportation programs across the Nation.

HIGHWAY BILL CONFERENCE REPORT

Mr. NUNN. Mr. President, I rise today to express reluctant support for the highway bill conference report. I had no such reluctance in voting for the Senate version of the highway bill. When this bill left the Senate floor, it was something of a landmark.

It represented a historic shift in national transportation policy away from new highway construction and toward maintenance and rehabilitation of often-crumbling existing roads and bridges. It acknowledged the increasing importance of urban mass transit in many States' overall transportation planning, a step of enormous importance in addressing not just our transportation problems, but our environmental and energy needs. It made great strides toward equity in transportation funding, reducing what had become truly outrageous disparities in rates of return many States were securing on their collections of dedicated highway taxes.

Most of all, it reversed a decades-old trend of Federal micromanagement of State and local transportation priorities. While the bill may not have gone quite far enough in that respect, it did re-establish the basic principle of federalism in transportation policy, against which both the executive and legislative branches in Washington have been habitual offenders.

In general, we had a highway bill that looked a lot more like a thoughtful effort to invest in our country's tattered infrastructure, and a lot less like a scramble for Federal cash, than any such bill in my memory.

We now have a conference report that is disappointing in some respects. It retreats from the Senate bill on funding equity. For every dollar taxpayers from my State of Georgia contribute to the highway trust fund they would receive about 80 cents, as compared to the minimum of 90 cents per dollar contributed contained in the Senate bill. Georgia currently receives about 74 cents on the dollar. It contains a new $4 billion program that was not in either the House or Senate bill, with half—that's right, half—of these funds going to just seven States. It uses 1980 census data, rather than 1990 figures, to distribute highway funds, for no apparent reason other than the advantage it gives certain States which have lost population during the last decade.

Still, Mr. President, the conference report does preserve the shift toward a more balanced allocation of funds among transportation functions—it does get Congress out of the business of deciding where each road or bridge will be built—and it does provide more funding equity than the current system. Though Georgia will still be a donor State, we will rank 9th in allocation of dollars while only ranking 11th in population and 24 in land mass.

Finally, Mr. President, I will vote for this conference report, with all its flaws, because of its importance to the economy, not just as a short-term infusion of cash, but as a long-range investment in the capital infrastructure we need to regain and sustain economic growth. The jobs created by this bill are enormously important, particularly as our Nation struggles to get out of our current recession.

I want to thank the Senate conferees, and especially Senators MOYNIHAN, CHAFEE, BURDICK, and SYMMS for all their hard work in committee, on the Senate floor, and in conference. It is due to their influence that this conference report ultimately represents a step forward the kind of transportation policy we truly need.

The PRESIDING OFFICER. Is there further debate?

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Is there further debate?

The Senator from Arkansas.

Mr. BUMPERS. Madam President, I know everybody is in a great sweat to get going, and I am too. I will just take a moment.

I had a sense-of-the-Senate resolution, which I will not offer, which simply said what has been said by a lot of Senators this afternoon about the economic activity that can be stimulated under this bill. My resolution, might I say to my distinguished friend from New York, the manager of this bill, would have urged the Highway Administration to get all the States to advance their projects and start getting the $11.1 billion that is in the trust fund out across this Nation as quickly as possible.

In my opinion, that is one thing the Congress can do quickly that would have a dramatic effect.

I heard the Senator from Florida say earlier today that every billion dollars of that trust fund we put out creates 40,000 jobs. The information I have is that it creates 52,000 jobs. So if you

could quickly put out $7 or $8 billion within the next 3 or 4 months—and I do not think that is unattainable—think of the kind of impact that would have on reducing unemployment in this country and help to get our economy wired again.

So I am not offering the resolution today, but that is where my heart is. You make that investment in the economy, and maybe an investment tax credit, and I think you could really get something going in the country.

I also want to compliment the chairman on the bill. My State comes out extremely well. I could not be more pleased.

Mr. MOYNIHAN. Madam President, let that be considered part of the statement of the managers.

Madam President, I believe there is no more debate.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I strongly support the surface transportation bill before us. Many of my colleagues have taken to the floor to speak about making the infrastructure investments that are necessary to relieve congestion, improve our air quality, revitalize the economy, improve our commerce, and make structurally deficient bridges and roads safe.

This bill will be our blueprint for the next 6 years. It is a significant piece of legislation. With the virtual completion of the National Interstate System, Congress faced the challenge of writing a bill that not only provided highway and transit funding, but also solved some longstanding problems.

Our economic well-being demands that our traffic congestion problem be relieved so that people and goods may move freely. This is important not only on a State or regional level, but is also necessary if we are to compete internationally. Forty percent of our bridges and primary highways are classified as poor—a situation which cannot be tolerated if we are to have any chance for growth and increased productivity.

Our air quality is deteriorating, and this bill allows the States and local planning bodies the flexibility necessary to alleviate pollution for the health and comfort of our citizens. There is a commitment to highway safety. Unsafe roads and bridges must be fixed and funding provided to begin those very serious and vital improvements. These are basic tasks that must be undertaken before our infrastructure crumbles beyond all hope of repair.

I am pleased that there is a recognition of the need for a national highway system. This system, called by some the post-Interstate System, recognizes that there are many primary roads—both urban and rural—that have a critical role in moving people and goods.

This bill keeps the promise to the people that the taxes collected and dedicated for highway and transit purposes will be spent as intended. The balances in both the highway and transit funds will be drawn down and put to use, as they should be.

As chairman of the Appropriations Committee, I, along with Senator LAUTENBERG who is chairman of the Transportation Subcommittee, have worked hard the past several years on our infrastructure problems. I am proud that in 2 years we were able to raise the Federal-aid highway obligation ceiling from slightly over $12 billion in fiscal year 1990 to $16.8 billion for fiscal year 1992.

This bill and its strong statement in support of investing—investing to solve today's problems and investing to provide a better future—certainly aids our efforts in the appropriations process.

This is a large and diverse Nation. Yet, a great nation's transportation policy must address that diversity, facilitate that interdependency, and allow for future growth and changing technology.

I applaud the conferees. In their deliberations, the goal of equity was always a top priority. The problems faced by Appalachia are different from those of the New York City region or those of the Sun Belt cities—but I believe this bill strikes a balance that should make for a stronger economy nationwide.

It is important that we appreciate that this bill creates jobs. That should not be minimized. This legislation may be just the tonic needed to begin to pull our economy out of the nose dive it has taken. The unemployment situation demands that we enact this important job-creating legislation. We should applaud the many benefits of this bill and its welcome contributions to our economic well-being.

In closing, let me say that, though my level of effort program did not survive, I am satisfied with the effort and consideration given my concerns. The framework is there to move us forward, and I support the product of the conference.

The PRESIDING OFFICER. If there is no further debate, the question is on adoption of the conference report. The yeas and nays have been ordered. The clerk will now call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Nebraska [Mr. KERREY], the Senator from Arkansas [Mr. PRYOR], the Senator from Illinois [Mr. SIMON], the Senator from Colorado [Mr. WIRTH] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. BROWN], the Senator from Missouri [Mr. DANFORTH], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Alaska [Mr. STEVENS] are necessarily absent.

On this vote, the Senator from North Carolina [Mr. HELMS] is paired with the Senator from Colorado [Mr. BROWN].

If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Colorado would vote "yea."

The result was announced—yeas 79, nays 8, as follows:

[Rollcall Vote No. 277 Leg.]

YEAS—79

Adams	Durenberger	Moynihan
Akaka	Ford	Murkowski
Baucus	Fowler	Nickles
Bentsen	Garn	Nunn
Biden	Glenn	Packwood
Bingaman	Gore	Pell
Bond	Gorton	Pressler
Boren	Grassley	Reid
Bradley	Harkin	Riegle
Bryan	Hatch	Robb
Bumpers	Hatfield	Rockefeller
Burdick	Heflin	Rudman
Burns	Inouye	Sanford
Byrd	Kasten	Sarbanes
Chafee	Kennedy	Sasser
Cochran	Kerry	Seymour
Cohen	Kohl	Shelby
Conrad	Lautenberg	Simpson
Craig	Leahy	Smith
Cranston	Lieberman	Specter
D'Amato	Lott	Symms
Daschle	Lugar	Wallop
DeConcini	McCain	Warner
Dixon	McConnell	Wellstone
Dodd	Metzenbaum	Wofford
Dole	Mikulski	
Domenici	Mitchell	

NAYS—8

Coats	Hollings	Roth
Exon	Levin	Thurmond
Graham	Mack	

NOT VOTING—13

Breaux	Jeffords	Simon
Brown	Johnston	Stevens
Danforth	Kassebaum	Wirth
Gramm	Kerrey	
Helms	Pryor	

So the conference report was agreed to.

Mr. MOYNIHAN. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT—CONFERENCE REPORT OF 1991

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consideration of the conference report on H.R. 3371.

The report will be stated.

The assistant bill clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3371) to control and prevent violent crime, 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. Without objection, 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 26, 1991.)

CLOTURE VOTE

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

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 the debate upon the conference report to accompany H.R. 3371, the Omnibus Crime Control Act.

George J. Mitchell, Lloyd Bentsen, Wyche Fowler, Richard Shelby, Charles S. Robb, Wendell Ford, Alan Cranston, Tom Daschle, Al Gore, Jeff Bingaman, J.J. Exon, John Glenn, J.R. Biden, Jr., Harry Reid, Sam Nunn, Frank R. Lautenberg.

QUORUM CALL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

The question is, is it the sense of the Senate that the debate on the conference report accompanying H.R. 3371, the omnibus crime bill, shall be brought to a close.

The yeas and nays are required.

The clerk will call the roll.

The assistant bill clerk called the roll.

(Disturbance in the visitors' galleries.)

The PRESIDING OFFICER. The Senate will be in order. The Senate will suspend until the Sergeant at Arms has restored order in the galleries.

The clerk will now continue to call the roll.

The assistant bill clerk resumed the call of the roll.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Nebraska [Mr. KERREY], the Senator from Arkansas [Mr. PRYOR], the Senator from Illinois [Mr. SIMON], and the Senator from Colorado [Mr. WIRTH], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. BROWN], the Senator from Missouri [Mr. DANFORTH], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Kansas [Mr. KASSEBAUM], and the Senator from Alaska [Mr. STEVENS], are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. HELMS], and the Senator from Colorado [Mr. BROWN] would each vote "nay".

The PRESIDING OFFICER (Mr. AKAKA). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 49, nays 38, as follows:

{Rollcall Vote No. 278 Leg.}

YEAS—49

Adams	Dixon	Lieberman
Akaka	Dodd	Metzenbaum
Baucus	Exon	Mikulski
Bentsen	Ford	Mitchell
Biden	Fowler	Moynihan
Bingaman	Glenn	Nunn
Boren	Gore	Pell
Bradley	Graham	Reid
Bryan	Harkin	Riegle
Bumpers	Hollings	Robb
Burdick	Inouye	Rockefeller
Byrd	Kennedy	Sanford
Chafee	Kerry	Sarbanes
Conrad	Kohl	Sasser
Cranston	Lautenberg	Wofford
Daschle	Leahy	
DeConcini	Levin	

NAYS—38

Bond	Hatch	Roth
Burns	Hatfield	Rudman
Coats	Heflin	Seymour
Cochran	Kasten	Shelby
Cohen	Lott	Simpson
Craig	Lugar	Smith
D'Amato	Mack	Specter
Dole	McCain	Symms
Domenici	McConnell	Thurmond
Durenberger	Murkowski	Wallop
Garn	Nickles	Warner
Gorton	Packwood	Wellstone
Grassley	Pressler	

NOT VOTING—13

Breaux	Jeffords	Simon
Brown	Johnston	Stevens
Danforth	Kassebaum	Wirth
Gramm	Kerrey	
Helms	Pryor	

The PRESIDING OFFICER. On this vote there are 49 yeas and 38 nays.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I have consulted with the distinguished Republican leader. It is my determination that the best way to proceed now would be to take up the banking conference report and the RTC bill under a unanimous-consent agreement which would provide for 15 minutes of debate equally divided on each of the two. And then at the conclusion or yielding back of the 30 minutes, back-to-back votes on the two measures.

I will, therefore, now—

Mr. DOLE. That is 30 minutes for the two, or each of the two?

Mr. MITCHELL. Total. I will now read the unanimous-consent request.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 15 minutes equally divided on the banking conference report, S. 543; that at the conclusion or yielding back of time the conference report be laid aside and the Senate proceed to the consideration of H.R. 3435, the RTC bill; that there be 15 minutes for debate on that bill with no amendments or motions in order thereto, and that at the conclusion or yielding back of time on that bill, the Senate vote without any intervening action or debate on adoption of the conference report on S. 543, the banking bill, to be followed immediately without any intervening action by third reading and final passage of H.R. 3435.

Mr. DOMENICI. Reserving the right to object, might I ask the majority leader, I am not sure that I will but I have not had a chance to read one provision in the RTC bill. I certainly do not want to delay things. I am concerned that one provision may be too narrowly drafted with reference to the authority of the RTC. The provision deals with the closing down of institutions.

Do you have a suggestion on how I might be accommodating to you, and yet preserve some opportunity to review this provision?

Mr. MITCHELL. The only way I can think of, which takes more time and inconveniences more Senators, is do the first one and vote on that.

Mr. DOMENICI. It is a flexibility amendment.

Mr. MITCHELL. My response was the only way I could think of is to limit the agreement to first the conference report on the banking bill and vote that. I am trying to accommodate as many Senators as possible.

This agreement was proposed by the Republicans.

Mr. GARN. Would the leader yield?

I might say to my good friend from New Mexico we finished the Banking Committee conference report at 5 a.m., so I expect that to go quickly. The RTC is not to my liking, not for any one provision but because the House of Representatives only put $25 billion in it rather than $80 billion. So I would like to object to the whole thing.

The point of it is, if we took the time to amend it with more money, go back and do the responsible thing, the House is going to be gone. So from a practical standpoint even though I totally agree with what the Senator wants to accomplish, I do not know how we could possibly amend the House-passed RTC bill and get them to considering anything. I say that as a practical problem. I do not know how to get at your problem any more than my problem, so I suggest we go ahead.

Mr. DOMENICI. I have no objection, Mr. Leader.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. Leader, we have a technical corrections amendment that has been signed off on both sides. It does affect the banking bill.

I only ask it be considered first—I do not know of any objection—so it can be sent back for enrollment purposes to the House before it goes out of session.

Mr. SEYMOUR. Mr. President, reserving right to object.

Mr. GARN. Senator RIEGLE has cleared this amendment. This was an amendment that was approved in conference last night and not enrolled by the House. It was left out in error. It was approved by both conferees.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. SEYMOUR. Mr. President, reserving the right to object, could I ask the distinguished majority leader, if in fact this unanimous-consent agreement is approved, will there be any other unanimous-consent agreements that are necessary before we adjourn?

Mr. MITCHELL. Certainly. There will be a very large number of them.

Mr. SEYMOUR. Thank you.

The PRESIDING OFFICER. Is there objection? The Senator from Alaska.

Mr. MURKOWSKI. Reserving the right to object, if I could make an inquiry on behalf of the managers of the bill, the Senator from Alaska had a technical amendment relative to the ability to purchase RTC debt. I wonder if that is included in the House bill that came over, or if there is any consideration of the disposition of that? It cleared our side.

Mr. GARN. If the Senator would yield. I cannot answer his question until staff gets here with the materials. We were in session for over 15 hours. There were dozens and dozens of amendments dealt with, give and take on both sides. So I cannot answer my colleague's question, but if you let us go ahead we can answer.

Let us get on the bill and then we will be happy to deal with this.

Mr. MURKOWSKI. I withdraw my reservation.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Reserving the right to object, does the UC vote include a voice vote or rollcall?

Mr. MITCHELL. The unanimous-consent request by itself does not provide for the form of voting. But our intention is to have a recorded vote, as requested by the Senator from Minnesota.

Mr. WELLSTONE. Thank you.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991—CONFERENCE REPORT

Mr. GARN. Mr. President, I submit a report of the committee of conference on S. 543 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 House to the bill (S. 543) to reform Federal deposit insurance, protect the deposit insurance funds, recapitalize the Bank Insurance Fund, improve supervision and regulation of insured depository institutions, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their receptive Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, 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 26, 1991.)

SENATE CONCURRENT RESOLUTION 83 TO AUTHORIZE A CORRECTION IN THE ENROLLMENT TO S. 543

Mr. GARN. Mr. President, while we are waiting for the distinguished chairman of the Banking Committee, I send to the desk a concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

S. CON. RES. 83

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill, S. 543, the Secretary of the Senate shall make the following correction:

At the appropriate place, insert:

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 and the deposits of Community National Bank and Trust Company of New York that—

(1) were deposited by a charitable organization as such term is defined by New York State law, or by a religious organization; and

(2) were deposits of such bank on the date of its closure by the Office of the Comptroller of the Currency,

shall be fully insured notwithstanding any other provisions of the Federal Deposit Insurance Act.

Mr. GARN. Mr. President, this is the one I just referred to. This was an amendment that was agreed to by both House and Senate conferees last evening unanimously. It was inadvertently left out in the printing.

Senator RIEGLE has agreed to this. I ask it be immediately agreed to.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 83) was agreed to.

Mr. GARN. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

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

The motion to lay on the table was agreed to.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I say to my colleagues who want to catch airplanes, including this Senator, that conversations on the floor impede that progress. So I hope we could have the consideration so we can finish this expeditiously.

There is no need for me to use 15 minutes on this side of the aisle. We discussed the banking bill last week and produced what I thought was a very good bill, and the Senator from Michigan is to be commended for his efforts, but it was not possible in the conference to prevail.

So we have what many on this floor wanted in the beginning, a narrow bill that does not deal with any powers, with interstate banking, all of those sections have been removed. We have the recapitalization of the BIF fund and the safety and soundness issues that go with that recapitalization.

The House passed this unanimously.

I hope my colleagues will overwhelmingly approve this bill. The BIF fund does need recapitalization. The protections that surround it, I think, are good. I reserve the remainder of my time.

Mr. GRAHAM addressed the Chair.

Mr. MITCHELL. I yield 5 minutes to the distinguished Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, we come another time today to one of those measures that will have a significant impact on both the immediate- and long-term economic well-being of this Nation. There is probably no factor that has had a more adverse effect and has deepened and extended the current recession more than the difficulty of American entrepreneurs and business people and individual consumers to have access to credit, not because they were not worthy of receiving credit, not because they do not meet standards that have traditionally been accepted as prudent, but because of restrictions within the system, some of which were restrictions that we have imposed.

Mr. President, I believe we have, again, missed the opportunity to use this legislation as a means of providing some economic relief and stimulation on to our Nation's economy.

So my reason for opposing this bill is, in large part, not what it is but what it could have been and if this

were to be defeated what it might be when we return I hope in December for focused consideration.

Frankly, we have not been thinking about this bill from the perspective of what could it mean to energize America's economy. This bill has not been debated or shaped from the perspective of what does it mean to the users of the system—what does this mean to the small business person, to the person engaged in international export, to the farmer, to all those people who look to the financial system as a fundamental source of nourishment for their ability to accomplish their own commercial economic goal.

But more than a missed opportunity, Mr. President, I suggest, like we did 4 or 5 years ago when we started down the slippery slope of the savings and loan industry, if you remember, the first bills we had were not going to be a taxpayer bailout. This is going to be a program in which all of the costs will be borne by the industry—exactly the representation that is being made on this bill.

Two days ago, we had the head of the FDIC before the Banking Committee and gave a very dire assessment of the situation, the subject of a front page story in Monday's New York Times. I believe if we go down this path, we need to do so with a clear understanding that this is going to be another taxpayer bailout. I believe that in that context, the basic structure of financing this bill needs to be rethought. A proposal to finance this over a 20- to 30-year bonding basis may be appropriate if you think the commercial banks are going to be able to pay sufficient premiums to repay those loans. I do not think it is an appropriate means of financing when we recognize the likelihood that this is ultimately going to be paid by the American taxpayers.

Mr. President, there are other issues. I think we have not done an adequate job of protecting the deposit insurance fund which, frankly, was the reason that dove us to this bill in the first place; that we continue to be vulnerable to further charges against the fund and eventually against the American taxpayers.

So, Mr. President, I reluctantly suggest to my colleagues that the prudent vote today on this bill is no. I hope that within a month we will have an opportunity to look at this bill from a different perspective and incorporate a different, more economically enlightened bill as part of a program that we can submit to the American people as the Federal Government's program for economic stimulation.

Thank you, Mr. President.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Michigan has 3 minutes remaining.

Mr. RIEGLE. I have to say to my colleague I only have 3 minutes under the time agreement by which to comment on this bill. I can yield 20 seconds, and I will do so if that is helpful to the Senator.

Mr. CONRAD. Mr. President, in order to make my vote in opposition to this bill clear, let me for a moment recount some history. A little over 2 years ago, the Senate passed the Financial Institutions Reform, Recovery and Enforcement Act [FIRREA] just before the Congress adjourned for the August recess. Despite the fact that that legislation was the biggest single taxpayer bailout in history, there was no recorded vote on the conference report. At the time, we were told that the bailout was only a temporary loan to the savings and loan industry. We were told that $50 billion would be sufficient to resolve the failures of thrifts and make good on the Government's commitment to insured depositors.

At the same time, Mr. President, I do not think there was a single Senator in this body who truly believed that the taxpayers would ever be repaid, who truly believed that $50 billion would be sufficient, or who truly believed we had found the most cost effective way of making whole the insured depositors of failed S&L's.

Mr. President, I was one of only eight Senators who voted against the Senate version of FIRREA, and I objected vigorously to the conference report. Since then, it has become clear that FIRREA did not solve the problems of the thrift industry, and that the taxpayers will have to pay closer to $500 than $50 billion for the S&L bailout. And in the next few hours, we will be asked to throw another $80 billion of the taxpayers' money down the same rathole.

Now, Mr. President, I am afraid that we are now making the same mistake with the bank insurance fund. We have been told that the $70 billion we are providing to the fund is only a loan, that it will be repaid entirely by the banking industry at no cost to the taxpayer. But, Mr. President, I do not believe that the banks will ever repay this loan. A recent Washington Post article began, "America's largest banks are in bigger trouble than Government officials and the banks themselves have publicly admitted * * *." The article goes on to say that the country's largest banks have gotten into such trouble through a series of bad decisions to lend money to the Third World, to corporate takeover artists, and to real estate developers that the industry may ultimately need an infusion of over $200 billion. The $70 billion in this legislation may not even be enough to last the bank insurance fund until the 1992 elections—especially if the economy fails to recover quickly and strongly, as now seems likely, and more banks fail than is currently projected.

In fact, Mr. President, 2 weeks ago when the Senate passed an amendment limiting credit card interest rates to a generous 7 percentage points above the prime rate—and nearly 10 percentage points above the discount rate—the banks howled that this action would destroy the banking industry. Mr. President, if the banks are so weak that they cannot survive without charging credit card rates nearly 15 percentage points above the rate at which they borrow funds, can we honestly believe that they are strong enough to repay a $70 billion loan?

Clearly, Mr. President, the answer must be no. Under these circumstances, I do not think that it is fair to the American taxpayer to pretend that we have solved the problem and that it will cost them nothing. That is why I am registering my opposition to this legislation.

Mr. RIEGLE. Mr. President, this is an urgent problem facing the country, namely, the insolvency, pending insolvency, of the bank insurance fund. If we are going to maintain Federal deposit insurance, the fund has to be recapitalized, and the legislation before us accomplishes that goal. It provides $25 billion in additional borrowing authority for the FDIC, as well as $45 billion in borrowing for working capital.

In addition to providing the funds necessary to keep the insurance fund solvent, we have in this legislation a number of essential reforms in the banking system that raise the standards with respect to how banks are supervised and how we monitor and build greater strength within the banking system.

Those improvements, such things as annual onsite inspections, eliminating brokered deposits by institutions that are in trouble, requiring that institutions that are failing be taken over before they finally exhaust their capital—a long series of very important reforms in that area.

We also move with respect to the problem of foreign banks so that situations like the BBCI case cannot arise again in the future.

We also include the Truth in Savings Act so that financial institutions will have to use uniform measures in indicating the rates of interest that they pay on accounts and that those be accurate.

We have overturned the Lampf decision with respect to pending securities fraud cases so that those cases that have now been filed are protected and can go forward. It is my understanding that this provision is not intended to apply to or in any way affect the parties or the claims in the Lampf decision itself. Nonetheless, all other cases that were pending on June 19, 1991 shall have the statute of limitations that existed in the applicable jurisdiction on that date.

The problems in our banking system cannot be solved by one single legisla-

tive package. This package is designed to restore on a loan basis the solvency of the deposit insurance fund and to put major, new banking reform into the regulatory system. The larger problem of the difficulties that have accumulated over several years in the banking system require a much bigger solution, a much stronger economic strategy, and I think other steps will be needed to try to allow us to handle large bank problems on an orderly basis, and we will have to take up that legislation, I think, before very much more time passes.

I will speak at greater length later in the afternoon when we are not under this time pressure at the moment. At that time, I will go on in much greater detail about the nature of this problem. There is no interstate branch, no repeal of Glass-Steagall, no merging of commerce in this bill.

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

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Utah has 6 minutes.

Mr. GARN. Mr. President, I yield 1 minute to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 1 minute.

Mr. D'AMATO. Mr. President, we did the best we could with this banking bill in the short period of time that we had, facing the constraints of time. We saw to it that the bank insurance fund was recapitalized, and that is important. We made some steps as it relates to soundness, safety of the institutions, gave the regulators some additional authority. And there are a lot of other areas that have to be and should be addressed in order to make this system one that is truly competitive.

This Senator introduced legislation dealing with that issue: The lack of competition in the area of interest rates charged on credit cards. I am not suggesting that that legislation was perfect, but I am suggesting that we have a lack of free competition in this area and that we would be remiss to simply go home and say that all is well and turn our head, in the other direction.

I hope that the regulatory agencies and the Justice Department, and the Federal Trade Commission will not allow this matter to continue unabated.

I thank the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Utah is recognized.

Mr. GARN. Mr. President, I yield the Senator from Michigan 2 minutes.

Mr. RIEGLE. Mr. President, I thank the Senator. We are under a very tight time agreement here under the need to finish our business today.

I want to say to my colleagues that this is truly an urgent measure that is before the Senate. Should we not enact this legislation, based on information that I have received from the regulators, we are going to find ourselves with a situation where we will have an insolvent deposit insurance fund and that bank failures, which are immediately in front of us, could not be handled, and we would find ourselves in a situation where we would not be able to honor the Federal deposit guarantee.

We just cannot allow that to happen. There is enough uncertainty in the economy now. There is enough weakness in the economy now. Confidence is way down. It dropped again in the last month. It is essential that this legislation be put in place. This is safety and soundness legislation that will allow us to maintain a major degree of stability in the system that is absolutely essential at this time.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Will the Senator yield for 30 seconds?

Mr. GARN. Mr. President, I would yield a minute to the Senator from Connecticut.

Mr. DODD. Mr. President, I rise in support of the banking bill, which was hammered out over the past 2 days and nights in a grueling conference.

I must say that I do so with some regret. I believe we need much broader reform of banking law than is included in this bill if we are to address the root causes of the problems now facing banks.

The truth is that the bank franchise has been eroded over the past 20 years as securities firms and commercial firms have gotten into banking—while banks have had no reciprocal opportunities. Deprived of profits from their traditional lines of business by increased competition, and deprived of other alternatives, banks have relied with greater frequency on riskier types of lending.

If banks are to be healthy in the long run, they need to have profitable alternatives to risky lending. At a minimum, they need to be able to branch interstate and to affiliate with securities firms. Without those powers, their franchise will continue to erode, their profitibility will continue to decline, and the danger that they will go the way of the thrifts increases.

Unfortunately, those essential reforms fell victim to intransigence on the part of the House of Representatives. Consistent with past history, the Senate rolled the rock up the hill in Sisiphean fashion, only to have to House push it back down again.

Notwithstanding that outcome, however, I look forward to revisiting the financial modernization issue when Congress reconvenes. Particularly after the Senate passed a broad bill here last week, and after narrow losses on the House side, I am convinced we can reach our goal if we make a serious effort. To this end, I plan to reintroduce interstate banking legislation as soon as we return.

I am also distressed that the bill closes neither the comptroller's town of 5,000 insurance agency loophole, nor the Delaware insurance agency loophole. It is bad public policy to permit such nationwide insurance sales from small launching pads. These provisions got caught up in the sweep of other events, and I plan to rectify the problem next year.

Despite these regrets, Mr. President, I do believe that the conference banking bill before us is a good second-best solution:

It arranges for the bank insurance fund to borrow $25 billion from the Treasury to cover the losses from protecting depositors at failed banks. This is critical, because failure to provide this funding would force the Federal Government to renege on its solemn pledge to protect insured depositors, and could cause financial panic. Equally important, this bill requires the banks themselves to repay every penny of this $25 billion.

It includes language I developed with others to encourage the regulators to use open bank assistance in carefully circumscribed cases. Open bank assistance is an important tool in addressing the credit crunch that is devastating Connecticut and New England because it enables troubled but viable banks to remain open and make loans to creditworthy borrowers. It also has a successful track record when used properly. Open bank assistance was used during the 1930's by the reconstruction Finance Corp., and the RFC made a profit. More recently, when used in the proper circumstances—as in the Continental Illinois case and elsewhere—it has met with similar success.

It includes the Truth-in-Savings Act I authored that has passed the Senate three times in the past 3 years. This measure will help consumers make sense of the wide variety of terms and conditions on accounts offered by depository institutions. In essence, it would require disclosure of that information in a standard format to enable consumers to comparison shop for the best deal.

It closes a loophole in the law that earlier this year permitted one State in the country to set itself up as a launching pad for banks that wanted to underwrite insurance nationwide. The provision I secured enactment of allows banks to continue their underwriting within the State that authorizes it, but nowhere else.

It also includes a provision I offered to give the Federal Reserve greater flexibility to respond in instances in which the overall financial system threatens to collapse. My provision allows the Fed more power to provide li-

quidity, by enabling it to make fully-secured loans to securities firms in instances similar to the 1987 stock market crash.

It also permits State chartered banks in Connecticut and other States to continue to invest small portions of their assets in corporate equity securities. The truth is that these banks have had this power for nearly a century, and no problems have resulted—and in fact, over the past several years, it has been a more profitable line of business than mortgage lending.

Finally, I would just like to say a few words about the provision of the conference agreement which will preserve the right of State-chartered savings banks to sell savings bank life insurance. This will enable thousands of consumers in Connecticut to continue to have this as a choice to meet their life insurance needs. The effect of this portion of section 303 is to permit a State savings bank that currently offers savings bank life insurance that is purchased by, or converts to, a federally chartered bank to continue to sell savings bank life insurance.

Mr. President, to summarize, I regret that we were not able to pass a broad financial modernization package this year. It was and is desperately needed. But the bill before us today is a good deal given the inflexibility on the part of the House. I urge my colleagues to support it.

Mr. President, I just want, very briefly, to express my deep appreciation as a member of the conference committee to Senator RIEGLE and Senator GARN, who did, I think, a fabulous job over 3 or 4 days, intensely last evening for some 16 straight hours, to produce not the best of all pieces of legislation. I would have much preferred interstate banking to be a part of that legislation. I would have much preferred that we had our commission on insurance and a number of other things. But obviously we do not all prevail in these debates.

The fact is that we have the reforms necessary to deal with the bank insurance fund. We have a variety of other provisions in there which we think strengthen the entire banking structure from a consumer standpoint, from a taxpayer's standpoint. And they are to be highly commended for their effort.

When I hear someone take the floor and suggest that they did not get some individual piece of this they would have liked to have had, they do themselves and this effort a great disservice. This is absolutely essential legislation. There has been a herculean job done to produce it.

I would just say to my colleagues here today who have not had the opportunity to read every detail in this legislation, this was a very fine piece of work. It is needed legislation. The other issues we will have to come back to.

I commend them for their efforts.

Mr. GARN. Mr. President, I ask unanimous consent to proceed for 1 minute.

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

Mr. GARN. Mr. President, let me emphasize the seriousness of this problem. If either one of these bills fail, we will not only cause problems in the system but we will be back in a week or so to deal with it. We cannot leave session, because in 1986 I stood on this floor, passed $15 billion of FSLIC recapitalization, the House turned it down and that cost the taxpayers $70 billion to $80 billion.

Everybody who wants to play games with this issue and say they were against these loans better realize that if this goes down, they will be the ones who are responsible for a vast increase in the cost.

I yield back the remainder of my time.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. Time is yielded back.

Mr. KASTEN. Mr. President, I rise today to express my deep disappointment with the conference report on the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

I belive that this report not only fails to fulfill our mission to restore health to the banking industry, but will ultimately cause more banks to close. During debate on this bill, I reviewed and analyzed the committee's bill and the subsequent amendments to it. I sought to balance the interests of both the large and small banks in Wisconsin and to assess what can be done to protect the taxpayer from a potentially insolvent industry. With this in mind, I cannot vote for this report in good conscience.

After consulting with my banking constituents, industry leaders, and Wisconsin taxpayers—I found that the general consensus among all parties was that this bill did not make sense for Wisconsin.

Any real banking reform requires the elimination of the too-big-to-fail doctrine. I firmly believe that no bank should be too big to fail. Protecting hundreds of billions of uninsured deposits is a burden never intended to be borne by the FDIC. Not only does it strain the insurance fund's resources, it also burdens the regulatory agencies with the entire responsibility for detecting and controlling excessive risk taking. But most important, it cost taxpayers money for a problem they did not create.

In addition to failing to eliminate too big to fail, this bill favors foreign depositors over American taxpayers. We are elected to serve our American constituents—not some foreign interest. I am disappointed that this bill did not access premiums on foreign deposits. The exclusion of foreign deposits from premium assessments is a huge loophole that needs to be closed. This bill did not address this issue.

These specific issues that I raise in my remarks force me to cast a vote against this package. This bill does not address the current problems of the banking industry adequately. It creates more paperwork for the banks with very little positive return to the industry, and it makes the American taxpayer pay more for a system of inequality that they did not create.

Mr. BRADLEY. Mr. President, I rise to make two points in opposition to the conference report on the banking bill.

First, we have settled on the least common denominator. Instead of using this opportunity to modernize our financial industry and make it more competitive in the world, we are entering the 21st century with laws and regulations from the 1930's. A sound financial sector is one of the keys to growth in the American economy, and I believe the American people deserve legislation that presents a clear vision of the role that banks should play in our Nation's economy and lays out a strategy for achieving that vision.

Second, the $70 billion we are pouring into the bank insurance funds will not be enough. In an eerie replay of the S&L bailout, the administration and the Congress are portraying this as a self-financing loan that will solve the problem, but the economic reality is that this may be only the beginning of another taxpayer bailout.

Indeed, today, with no substantive debate, the Congress will approve another $80 billion for the botched S&L cleanup.

I opposed the bill when it passed by voice vote last week, I will oppose the RTC bailout and I will oppose this conference report.

The least common denominator is not enough.

Mr. WIRTH. Mr. President, although the bank reform package has a number of important elements, I opposed the legislation when it was reported by the committee and when it passed the Senate. I believe the conferees, given present circumstances, were right to narrow the package in order to increase the likelihood of enacting legislation. Nevertheless, many of the concerns I cited in opposing S. 543 still hold with respect to the conference report we are now considering.

While I support elements of the legislation, I believe there are other areas in which S. 543 needs significant improvement. BIF funding and recapitalization and 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 prob-

lems 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 are a step in this direction as are the provisions designed to attack the too-big-to-fail problem. However, I think we can and should do more. For instance, I believe we should include a haircut that would supplement the too-big-to-fail provisions by ensuring that uninsured depositors and creditors are never fully protected in a bank or thrift failure.

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 sure that a bank reform package that doesn't include the regulatory restructuring we need is worthy of the name.

In addition to these and other concerns that I have previously voiced, there are several new factors that contribute to my decision to oppose the conference report.

First, is the concern that Senator RIEGLE cited in a recent letter to President Bush about the increasing problems in the bank insurance fund and the inadequacy of the $70 billion loan to the fund. Senator RIEGLE indicated that is increasingly unlikely the banks will be able to repay this loan and that we may be on the road to a taxpayer bailout of the insurance fund. Senator RIEGLE'S reassessment of the troubles in the banking system and insurance fund reinforce the concerns I had earlier in the year. My doubts about the FDIC recapitalization provisions in the package have only increased as the legislation moves closer to enactment.

I am also troubled by the loss of several important provisions in conference. The Senate legislation included a provision I offered with Senator GARN to direct regulators to adopt uniform real estate lending standards. That provision included specific loan-to-value ratios that would take effect if the regulators do not act within 15 months. The conference report simply directs the regulators to adopt uniform real estate lending standards.

My problem with that is we have tried it before and the regulators ignored us. Given the importance of the problem, the history of regulatory inaction, and the links between bank and thrift failures and the condition of our real estate markets, I think we need to give them an incentive to act. Specifying standards that go into effect if regulators do not act will force them to examine the issue and determine what sort of standards are appropriate.

The legislation passed by the Senate also included 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 settlements of Government lawsuits related to such institutions. Senator GARN and I put a great deal of effort into this issue and were able to resolve our differences on the proposal and incorporate a number of safeguards to protect customer privacy.

Unfortunately, the conference report only includes the narrow disclosure provision that the House adopted. This provision would prohibit the FDIC from entering into confidential settlements of claims it brings as a conservator or receiver for a failed institution. However, the provision would not apply to the RTC and would not require the release of any settlements that have already been reached.

In addition, the conference report would not require that examination reports be made public in any form. It also would not require the FDIC and RTC to identify insider borrowers who default on a loan and cause a loss to an insured institution that has failed at taxpayer expense.

It is important that taxpayers have access to more information about bank and thrift failures if public funds are used to resolve the failure. The legislation we passed last week would have provided access to additional information about bank and thrift failures while protecting customer privacy. The conference report will not.

These developments reinforce my reluctance to support the conference report. The changes made to the legislation in conference do not give me reason to alter my position on the legislation and I will oppose it.

Mr. GRASSLEY. Mr. President, I am pleased to support the report on the banking bill from the conference committee. This conference strikes a good compromise on the issues of importance to our Nation.

I am particularly pleased that the interstate branching provisions were dropped from the bill. For our Nation to be economically strong, we must be strong from our rural communities to our metropolitan cities. This bill is sensitive to the need for rural economic development. It does not exalt large interstate banks at the expense of small community banks. I am pleased with the balance.

I remain concerned about the need for assessing foreign deposits for the purpose of the Bank Insurance Fund. However, this conference report begins to address that issue and takes a step in the right direction.

I support this compromise and thank my colleagues for the long hours they labored to work it out.

Mr. SANFORD. Mr. President, I am voting against this banking bill because it fails to do what is needed as a minimum. Many regard recapitalizing the Bank Insurance Fund [BIF] as the essential goal. I disagree. What is essential is recapitalizing the fund and providing the opportunities to banks to achieve long-term profitability, competitiveness, and self-sufficiency which will in turn enhance our economy—and assure the soundness of the fund.

This is now nothing more than a rescue bill, and this attempted rescue could actually deplete banking capital, which will increase the risk to the taxpayers. There is no excuse for the Treasury Department, out of timidity, to flake out on modernizing the banking industry. There is no excuse for the House of Representatives to permit a handful of Congressmen to thwart the sound legislation passed by the Senate. The measure to recap the BIF, under the auspices of a taxpayer guaranteed loan, will result in increased bank premiums. Without expanded powers to adequately compete in the current financial environment, many sound banks will be unable to meet the premium requirement and may face the distinct possibility of failure.

We will not have a strong economy without a strong banking system. At the very least, the banking system needs two things.

First, banks need the ability to diversify beyond State boundaries. Even the people who believe that we should not give banks greater diversity in terms of the products and services they could sell agree that allowing greater geographic diversification through

interstate banking and branching would result in a safer, sounder banking system. Alan Greenspan, Chairman of the Federal Reserve, noted, for example, that:

> What interstate banking promises is wider consumer choices at better prices and, for our banking system, increased competition and efficiency, the elimination of unnecessary costs associated with the delivery of banking services, and risk reduction through diversification.

Second, we must have as a policy, a firm determination that we will not allow a bank to fail if there is sound reason to prevent it. This policy should go beyond the concept of either early intervention or forbearance. I view impending bank failures with far more apprehension than most people. I view bank failures with such a magnitude that I believe that they could turn a recession into a depression. Bank failures have more to do with damaging the economy than just costing the taxpayer additional money to pay off depositors. Allowing a marginally capitalized, but otherwise sound bank to fail is like scuttling a ship loaded with cargo. Pulling the plug on a bank swamps or sinks the community. It affects jobs, real estate, all businesses, and credit—essentially the fundamentals of the economy.

Earlier in the session, I suggested legislation that would essentially create a 1990's version of the Reconstruction Finance Corporation, one of the major tools used for reversing the depression of the 1930's. The RFC, in its Depression-era years, spent some $10 billion, a lot of money then, and returned all of it to the Treasury with about $500 million in profits. I think this kind of investment now could have the same result. Certainly, the need is there, and the danger of unnecessary bank failures is there.

This idea was modified and inserted in the banking bill as a sense-of-the-Congress provision. Current law, section 13(c) of the Federal Deposit Insurance Act gives the FDIC and the Office of Thrift Supervision [OTS], the authority to make direct equity investments in or take other steps necessary to address the problems of troubled but viable institutions. The intent of this sense-of-the-Congress measure is to encourage regulators to assist prudently troubled banks in order to stave off massive numbers of bank failures and to produce the least possible long-term cost to the Bank Insurance Fund and the Savings Association Insurance Fund—and the taxpayers ultimately. Although the FDIC and the OTS have had this authority for some time, they have been reluctant to use their open assistance programs for fear of disapproval from Congress in light of the negative repercussions from the days of forbearance during the mid- to late-1980's in the thrift system. I am talking about something different, and I hope the leaders of the FDIC and OTS will have the courage to step up to the job and save the banks, the communities, the economy, and the taxpayer's money.

This resolution contemplates the investment of equity capital—real money—both by the FDIC and private investors. It calls for a careful strategy of appropriate open bank assistance to be used to lower the expected cost to the insurance fund, not simply to prop up a bank for the sake of keeping it open. It not only allows the regulators to invest new capital in profit-oriented banks, it gives them the authority to change management or insist on a merger to facilitate a healthier industry.

Earlier this week, I was encouraged to hear Chairman Taylor's comments on his ideas for a banking hospital. I think the principle is the same; in certain cases it may be better and less costly not to liquidate and close a bank and destroy its good loans to the community, but give it assistance in such a way that it returns to being a healthy and viable institution. I encourage him to exercise independent judgment and use creative means when necessary to reverse present trends. It is through a combination of creative and prudent management that we will reduce the number of bank failures and relieve the pressures that currently plague the BIF. The Treasury Department and the Congress, however, have failed to provide the penicillin needed for Taylor's hospital.

We have an ailing industry, and as the banking industry goes, so goes the economy of the Nation. I am simply not willing to vote for bailout money without passing legislation to make a sounder banking industry. If banks keep failing, there will not be enough money in the entire country to pay off the losses. This stripped-down legislation will pass without my vote, but it will not strengthen the economy by strengthening the banking system. We are not doing our duty if we are not addressing the heart of the problem. We have an outdated banking regulatory system which is in need of reform. Crafting reform and passing it is essential, Mr. President, not just replenishing the insurance fund. Without this reform, the guaranteed taxpayer loan to the BIF will turn into nothing but a bailout.

I believe that the best tool in anybody's economic package is a strong banking system. I hope that the Congress will revisit the issues in the Senate banking bill first thing in the new year.

I am going to insist that the Senate Banking Committee meet the first week of our return in 1992 to turn again to the task of redeeming the banking industry's competitive position. Completing this work in a timely manner is imperative for the health of the banking industry as well as the entire economy.

Mr. SIMPSON. Mr. President, I rise in support of the conference report to S. 543, the banking reform legislation, and I urge my colleagues to vote for its passage.

In doing so, I would like to express a few words of commendation and a few words of caution as well.

The caution that I urge is against complacency—the legislation which we are about to pass will do some very important things. It will restore some incentives for proper investment behavior to our Federal deposit insurance regulations, incentives which are badly needed for the health of our financial system.

However, we must not delude ourselves about the very real problems in the banking system—those which led to the current necessity of borrowing $70 billion—those have not gone away.

I hope that there will not be any misunderstanding of that. We did not enact reform measures as comprehensive as those originally proposed by the administration, nor as those crafted so carefully by the distinguished chairman and ranking member of our Banking Committee.

We should not have any illusions about why that is so. The House of Representatives on two occasions this year killed any comprehensive banking reform legislation. I agreed with their decision to kill their first banking bill—it was not a good bill, and I would have voted against such a bill had it come before the Senate.

However, their consistent willingness to pour $70 billion into a system which suffers serious dangers of insolvency, without attempting to correct some of the problems that made that $70 billion loan necessary, strikes this Senator as the very height of irresponsibility.

Because that is what a "narrow" bill is—it is forking over $70 billion, and doing nothing to reduce the amount of similar expenses in the future.

This is why I believe that the managers of our bill—Senators RIEGLE and GARN—are so greatly deserving of commendation. The extent to which our banking system will be reformed by this legislation—however insufficient—is entirely due to their determination, and that of the administration, to produce meaningful reform.

Banking reform is not a "sound bite" issue—let's fact it. Few Senators are going to be able to go home and impress voters with these often arcane and esoteric policy decisions. There is every incentive to stay away—the $70 billion which will be loaned to the banking system by this bill has "political poison" stamped all over it.

But that issue has to be faced, because we're talking about potential losses to the taxpayers of billions of dollars. Senators RIEGLE and GARN have faced up to it, and I commend them for that.

It would have been very easy to duck this issue—the House was clearly not interested in passing comprehensive reform, and the Thanksgiving target date for recess was fast approaching.

Moreover, the banking bill didn't seem to be going anywhere. Getting this body to cooperate to act on this legislation was like pulling teeth. I distinctly recall a moment last week when Senator RIEGLE and Senator GARN seemed almost alone here on this floor in their willingness to "stick it out" and to get the job done.

Many will look at the fact that this bill has been considerably narrowed in conference and wonder whether the effort to enact comprehensive reform was worth it. I say that it was. Given the amount of money at stake in this area, it was absolutely our obligation to try—to get as much comprehensive reform as was possible. If in the end we did fail to get as much as we would have liked, it ought not to be because we failed to make the maximum effort.

My personal belief is that we will be standing here again on the floor at some time in the future, attempting to enact the financial system reform that this country desperately needs. I do not know whether we will be facing a crisis at that time. However, if we are facing new crises and new costs, they will be reduced in magnitude thanks to the tireless efforts of Chairman RIEGLE and Senator GARN, the ranking member, relative to what those costs would have been without this legislation.

At that time the House of Representatives will have to wake up and pass at long last some financial system reform. When they do, I hope they will remember the example of Senators RIEGLE and GARN, and will emulate their spirit of bipartisan cooperation, and determined sense of responsibility—in what will surely be a thankless task.

And let me say how much we will miss our dear friend from Utah, Senator GARN. He is a real force in this Senate—a man of fierce loyalty to his cause. A man with a total grasp of our financial institution laws.

Had we listened to this sincere and dedicated man—and passed the legislation he always pressed for—we could have avoided most of the debacles of the recent past as they relate to America's financial structures. God bless his efforts.

I thank my colleagues and I yield the floor.

Mr. HOLLINGS. Mr. President, today the Senate passed the conference report for the banking bill. I want to make it clear why I voted against the banking bill. I specifically oppose title I of the bill which authorizes a $70 billion loan for the FDIC to recapitalize the bank insurance fund. The banks have neither the capital nor the resources to pay back this loan and mark my words this is only the beginning of more requests for bailout funds for the banks. The administration assures us that this loan will be paid back by the banks, but this legislation includes no taxpayer protections to ensure that the taxpayers aren't left holding the bag. Mr. President, there is a district difference between the banks in South Carolina and the banks on a national level. Our banks in South Carolina have invested prudently, responsibly and remained financially stable, while at the same time making sure the needs of their surrounding communities are met. However, once again, the people of South Carolina are being asked to help cover the excesses of other parts of the country.

Mr. President, being a child of the Depression, I understand the necessity of insured deposits to maintain economic stability and consumer confidence in savings institutions.

However, it seems to me that it has become all too easy to look to the Government and to the taxpayers to pick up the tab for risky and unsound investment gone bad. First the S&L's, and now the banks have bankrupted their insurance funds. And where does that leave us, Mr. President? With a $160 billion taxpayer tab for the S&L mess; with a CBO estimate that another $30 billion will be needed on top of that—for a grand total of $190 billion. And this is only actual losses, if we include interest on the $190 billion, the total amount for S&L cleanup is well over $500 billion. I can only wonder what the final tab will be for the banks. We are giving them $70 billion to start with, and it's a sure bet that this is only the first installment with the full bill to come in 1993 after the elections.

Mr. President, what we need to do is pay the depositors of failed institutions their $100,000 that is insured and leave it at that. We should have learned that from the S&L's. No more keeping afloat these too-big-to-fail institutions only to allow them to make more bad loans. What we've got here, Mr. President, is a government bureaucracy sending good money after bad, with no end in sight. There is no reason to put the American taxpayer at risk to bear another financial burden of this magnitude. The banking community in this country could use the same type of leadership that our banks in South Carolina are blessed with. Until I see some indication, Mr. President, that responsibility will be the banks' watchword and not recklessness, I intend to vote no whenever this issue comes before the Senate.

Mr. RIEGLE. Mr. President, I want to make a few comments about certain provisions, of the banking bill, whose conference we concluded early this morning, which deal with the regulation and supervision of foreign banks. I am very pleased that the conference agreed to the legislation which the Federal Reserve Board sent to the Congress last May in response to my March 25, 1991 letter to Chairman Greenspan seeking the Fed's recommendations for improving supervision of foreign bank operations in this country in light of the BCCI revelations. This section of the bill will ensure that banks that are not subject to comprehensive supervision and regulation on a worldwide basis will be kept out of this country. It also permits the Fed to terminate the activities of foreign banks now operating in this country that lack such consolidated supervision.

Another section of the conference report foreign bank subtitle ensures that foreign banks, that wish to accept or maintain insured deposit accounts, do so only in subsidiary banks incorporated in the United States. Although the taking of retail deposits in insured branches is not presently a widespread practice by foreign banks, I pushed for enactment of this provision as a safeguard against any future expansion of this practice in order to better safeguard the bank insurance fund from losses by branches of banks whose full operations we do not oversee or control. In the past the FDIC has expressed concerns that in the event of insolvency of a foreign bank, assets could easily be shifted from the U.S. branch and out of U.S. jurisdiction while deposits could be shifted to the U.S. branch. Such practices, of course, would create new risks for the bank insurance fund and taxpayers who stand behind it. During his September 24, 1991 confirmation hearing William Taylor, Chairman of the FDIC, endorsed this provision.

Another provision in the conference bill which I authored requires the Treasury and Federal Reserve to do a joint study describing the methodology the Federal Reserve Board should use in making determinations that foreign banks have capital equivalent to that required of U.S. Banks that wish to engage in securities or other activities in this country. The Federal Reserve should ensure that in reviewing applications by foreign banks under the International Banking Act and the Bank Holding Company Act that it not approve them unless it can clearly judge that the foreign bank has capital equivalent so that it would require of a U.S. Bank to engage in a similar activity. The United States can not afford to give foreign banks competitive advantages in our own market and it is not fair to U.S. institutions if the Fed does so. Having the methodology used by the Fed in making such judgments will help our oversight of the Fed's actions in relation to foreign bank applications.

I also note that the subtitle contains a requirement that the Treasury Department and Federal Reserve Board jointly, in consultation with the Justice Department and OCC, examine

various facets of foreign bank operations in the United States to determine whether they should as a general rule be required to operate through subsidiary banks incorporated in this country rather than direct branches of the foreign bank. I certainly expect this study will comprehensively review the assigned factors and will provide a basis for the Congress to fully consider what is the proper U.S. policy for regulating foreign banks within our borders. It will provide the Banking Committee with the basis for oversight and perhaps legislative hearings in this area.

I very much appreciate the assistance Chairman GONZALEZ and other House conferees gave us in getting these much needed foreign bank provisions enacted into law.

Finally I am pleased to note that although House Banking Committee conferees could not agree to put the fair trade in financial services provisions into the conference bill, because it would have required the agreement of committees not part of the conference, the House conferees did agree to help get those provisions conferenced early next year in the conference on the Defense Production Act. Members from all the relevant committees have already been named to that Conference. Senator GARN and I look forward to getting this much needed legislation enacted into law early next year.

Mr. BRYAN. Mr. President, I rise to express my strong support for an important provision included in the Comprehensive Deposit Insurance Protection Act of 1991 (S. 543) that dramatically affects the lives of tens of thousands of American who have been the victims of securities fraud cases. The provision I refer to overturns a recent Supreme Court decision, Lampf versus Gilbertson that retroactively and unfairly shortened the statute of limitations in securities fraud cases.

This bill before us today includes portions of bipartisan legislation I filed with 13 of my colleagues earlier this summer, S. 1533. While I would have preferred all of S. 1533 be included, I am pleased that Congress is overturning the most egregious part of the Court's decision.

Mr. President, as respected economist Felix Rohatyn recently noted, "We have just seen the end of the greatest decade of speculation and financial irresponsibility since the 1920's." Unfortunately, the Court's decision has the effect of rewarding financial wrongdoers.

The Court ruled in Lampf that anyone seeking to recover losses because of securities fraud must sue within 3 years of the time the fraud occurred and within 1 year of discovering the fraud. Previously, the time period for filing was based on the laws in the States and judicial jurisdictions which were generally more generous than the periods specified in Lampf.

This shortening of the current statute of limitations makes it nearly impossible to sue those guilty of fraud, since most fraud remains hidden for many years. As Securities and Exchange Commission Chairman, Richard Breeden testified at our hearing last month, "An unrealistically short limitations period would in many such cases effectively immunize the perpetrators of deliberately fraudulent schemes from liability to private investors."

The Supreme Court compounded its mistake by applying its decision retroactively. In effect, Lampf changed the rules in the middle of the game for thousands of fraud victims who already had suits pending—applying a shorter statute of limitations than when they brought their suits.

The Supreme Court's decision in Lampf, June 20, 1991, in effect frees Michael Milken and scores of other felons and defendants of responsibility to pay back the people they have swindled. It would be a monstrous injustice that the icons of creed in effect escape responsibility by reason of a Supreme Court decision that is given a retroactive application. All we seek is to give the victims a fair day in court.

The Court's decision could adversely impact the government's efforts to recover losses in court from S&L executives who have stolen from their institutions. The fewer cases the Federal Deposit Insurance Corporation and Resolution Trust Corporation can bring, the higher the S&L bailout costs will be on the taxpayers.

Opponents of my legislation tried to make this a referendum on frivolous lawsuits. This was a red-herring. Financial fraud cases are complex, protracted, aggressively defended and risky. It is almost invariably years before a trial is even scheduled. If the defendant wins, the plaintiff's attorney usually receives no compensation. Therefore, there are very substantial incentives already built in not to engage in frivolous or even marginal litigation.

With time running out for this session of Congress, we were forced to compromise with opponents of S. 1533 in order to take care of the most egregious part of the Lampf decision. We dropped portions of our legislation that would have extended the statute of limitations for cases filed after June 20, 1991. At this time, we are only addressing the most immediate problem—the unfair application of the Supreme Court's Lampf decision to cases that were pending at the time that the decision came down.

Many courts across the country are applying Lampf to cases that were timely when filed, but are now said to be untimely. With respect to those cases, it is our intent to go back to the state of law as it existed before Lampf. It is my understanding that most Federal courts "borrowed" statutes of limitations, including principles of equitable tolling, from State law. With respect to cases filed in courts that adopted this "borrowing" practice, the borrowing approach would continue to apply.

A few Federal courts had begun to adopt a federalized statute of limitations. The law in those circuits would be the law as it existed on June 19, 1991, including "principles of retroactivity." A number of courts had switched from a "borrowing" approach to a federalized and shortened statute of limitations, but had declined to apply the uniform federalized approach retroactively because of the obvious unfairness of doing so. In those circuits that had declined to apply the shortened statute retroactively, the courts would continue to be obliged to decline to apply the new rule. That is the meaning of the phrase "including principle of retroactivity."

In effect, this provision in S. 543 overrules the retroactive effect of Lampf and applies the law as it would have been applied in particular circuits the day before the Lampf decision was decided. That would of course include interpretative principles such as retroactivity and equitable tolling.

In a sense this is a moment both bitter and sweet. I am disappointed that we could not reach an agreement on the statute of limitations prospectively. I continue to believe that a longer statute of limitations is necessary and appropriate. On the other hand, I think we are correcting some of the most serious adverse affects the Lampf decision has wreaked upon pending cases.

I request that two recent articles about this issue be included in the RECORD.

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

[From the New York Times, Nov. 19, 1991]

STOP THE CLOCK ON SWINDLERS

(By Barbara Roper)

WASHINGTON.—The Supreme Court has come to the rescue of Michael Milken and others accused of stock fraud. Unless the Senate includes strong anti-fraud measures in its banking bill this week and they are ultimately approved, people like Mr. Milken will be free from responsibility for repaying the hundreds of thousands of people who lost billions of dollars in stock scams.

The Court's ruling on June 20 in the case of Lampf, Pleva v. Gilbertson was met with glee by financial swindlers and dismay by law enforcement officials. The Court ruled that anyone seeking to recover losses because of securities fraud must sue within three years of the time the fraud occurred and within one year of finding out about the offense.

The decision was made retroactive, telling victims who have suits pending that the statute of limitations is now shorter than when they brought their suits.

Some members of Congress are working to remedy the situation. Senator Richard

Bryan, Democrat of Nevada, has added a provision to the banking bill now being put together that would reverse the Lampf ruling. He has proposed limits of two years after the discovery of fraud and five years after fraud occurred in which to file suits. Although such legislation was not included in the House banking measure, and independent bill that would similarly aid fraud victims has been introduced by Edward Markey, Democrat of Massachusetts.

The Lampf decision will frequently make it impossible to sue people who are guilty of investment fraud, because fraud is usually not discovered until years after it takes place. In testifying against the Court's decision at a Senate hearing last month, the Securities and Exchange Commission chairman, Richard C. Breeden, said "An unrealistically short limitations period would in many cases effectively immunize the perpetrators of deliberately fraudulent schemes from liability to private investors."

The retroactive power of the Lampf ruling is a bonanza for corporate predators facing massive liability suits. Michael Milken and the Executive Life Insurance Company's chief executive, Fred Carr, and other defendants filed legal motions in Federal district court last month to have eight bondholder suits dismissed because of Lampf's new statute of limitations. Mr. Milken is serving a 10-year sentence for Federal securities violations, but his victims are pursuing civil lawsuits to gain reimbursement from his schemes.

The general counsel of the Federal Deposit Insurance Corporation, Alfred J.T. Byrne, said the Court's decision could undermine the F.D.I.C.'s cases aimed at recovering losses from savings and loan executives who bilked their institutions. The result: U.S. taxpayers will pay an even larger share of the S. & L. bailout costs, now estimated at about $250 billion.

This month, Charles Keating of Lincoln Savings and Loan and his accountants followed Mr. Milken's lead. They are trying to free themselves from legal responsibility to reimburse the thousands of people, many of them elderly, who bought worthless bonds at the California thrift.

The major securities houses and accounting firms have a team of high-priced Washington lobbyists (headed by Ivan Boesky's former defense lawyer, Harvey L. Pitt) to stop the legislation against Lampf. These lobbyists are solemnly telling lawmakers of their concern for the legal process and the need to stop frivolous lawsuits. But it takes little insight to figure that their intent is to avoid paying damages to people who have lost their life savings.

Congress can show some courage by ignoring the mouthpieces of wrongdoers and undoing the Lampf ruling as soon as possible.

[From the Wall Street Journal]

MANY SECURITIES-FRAUD SUITS ARE LIKELY TO GO UNHEARD AFTER HIGH COURT RULING

(By Kevin G. Salwen)

WASHINGTON.—Billions of dollars of lawsuits against Michael Milken, Charles Keating, Fred Carr and other figures in financial scandals of the 1980s have been or are likely to be dismissed as a result of a Supreme Court ruling handed down in June.

The 5-4 high court decision imposed federal time limits on securities-fraud suits filed by shareholders. Such suits previously were subject to state-law time constraints. The court decision also set the limits retroactively, giving lower courts a mandate to dismiss pending lawsuits.

In the past five months, according to a study by the House Telecommunications and Finance Subcommittee, suits totaling $652 million have been thrown out as a result of the court's ruling. Motions to dismiss an additional $4.55 billion of suits are pending, and motions to dismiss a further $1.21 billion of suits are expected, according to the survey. Subcommittee staffers said the survey is incomplete and could ultimately show higher numbers.

Legislators are fuming over the ruling's effect. "In its ill-considered decision, the Supreme Court signed over a multibillion check to Michael Milken, Charles Keating and a coalition of special interests which have produced the financial wreckage of the 1980s," said Rep. Edward Markey (D., Mass.), chairman of the subcommittee.

"I think it would be a monstrous injustice that the icons of greed in effect escape responsibility by reason of a Supreme Court decision that's given retroactive application," said Sen. Richard Bryan (D., Nev.), sponsor of a Senate bill that would reinstate the cases. "All that is sought is to give these people a fair day in court."

The June ruling said suits must be filed within one year of the time the fraud is discovered and three years of the actual fraud. Senate and House members are scrambling to push through bills that would lengthen the period to two or three years after discovery and five years from the actual fraud.

But the bills face significant opposition from large corporations, accounting firms and the securities industry. The opponents argue that the court's ruling provided needed relief from uncertainty over possible litigation.

The Bush administration, including Treasury Secretary Nicholas Brady, has agreed to support the pending legislation, but only if it includes provisions to block what the administration considers frivolous suits. That stipulation probably is a deal-breaker, as supporters of the legislation contend that the frivolous-suit language would prevent legitimate actions against some cases of fraud by companies and individuals.

The Securities and Exchange Commission and other regulators are backing the bills. They contend that the new time limits won't give investors enough time to bring fraud cases, as it often takes the SEC more than three years to uncover fraud. The legislation would restore properly filed suits that have been dismissed, sponsors and plaintiffs' lawyers say.

Among cases that have been dismissed or have dismissal motions pending, possibly the biggest is one originally filed against now-defunct Wall Street house Drexel Burnham Lambert Inc. and the firm's former junk-bond king Mr. Milken, as well as Mr. Carr and most major firms on Wall Street. The plaintiffs bought Executive Life Insurance bonds that lost value when the large California insurer, which was headed by Mr. Carr, failed. The plaintiffs say they were defrauded because they weren't told that their money was going into junk bonds.

In addition to Messrs. Milken and Carr, defendants filing dismissal motions are securities firms that sold the $1.85 billion of Executive Life securities. They include Merrill Lynch & Co., Salomon Inc.'s Salomon Brothers, First Boston Corp. and Mr. Brady's former firm, Dillon, Read & Co. Another of the defendants, Morgan Stanley Group Inc., is scheduled to testify before Mr. Markey's subcommittee this morning.

Lawyers also have filed for dismissals of suits against Mr. Milken and Thomas Spiegel, the former head of Columbia Savings & Loan Association, which has been taken over by the Resolution Trust Corp. Because the government is bailing out the thrift, it would stand to share in any compensation paid in the suits. "The court decision has threatened the recovery of millions of taxpayer dollars in S&L and bank failures that are attributable to securities fraud," Mr. Markey said.

Another motion is pending in a case involving Mr. Keating's American Continental Corp. Some 23,000 plaintiffs contend they were defrauded of $300 million to $400 million when they bought Lincoln Savings & Loan Association junk bonds in the thrift's branches, thinking they were federally guaranteed. Those securities collapsed when the thrift became insolvent.

Lawyers who back the Supreme Court action shrug off the criticism as sour grapes from plaintiffs' attorneys seeking big awards. "The court isn't deciding what the law shall be; that's the legislature's job," said Theodore Olson, who argued the high court case on behalf of the law firm that won it. "I certainly don't have any misgivings about this."

But that's not the view of Washington lawyer Stephen Silbiger. He represented some plaintiffs in a group that lost a $130 million judgment when an appeals court reversed the jury award in light of the Supreme Court ruling. The case, which had been tied up in the courts for 18 years, stemmed from what Mr. Silbiger calls a "Ponzi scheme" in which Home-Stake Oil & Gas Co. allegedly bilked investors from 1958 to 1973. The award now won't stand because it was filed more than one year after the discovery of the fraud.

"I think everybody agrees that this is outrageous—except for the people who would have to pay," he said.

Mr. ROTH. Mr. President, I rise to address certain provisions of S. 543, the bill to recapitalize the bank insurance fund, which are of particular interest to me. The dual banking system is of critical importance to the continued vitality of the banking industry. The term—the dual banking system—is nothing more than the banking industry's description of the doctrine of federalism in operation in the area of banking. The genius of federalism is that individual States can serve as the laboratory for innovation without the risk of a national experiment.

Delaware has taken the lead, in recent times, in authorizing its banks to sell and underwrite insurance products. Actually, Delaware's effort is not unprecedented. About a half dozen States allow their banks to underwrite insurance and nearly half of the States allow their banks in some way to sell insurance. And some of these authorizations go back beyond the memory of anyone here.

What is unusual about the Delaware initiative is its timing. The insurance industry is changing. Computers have given the industry control of large data bases critical both to underwriting and to selling. For the first time large banks will be able to compete and to make a difference.

The conference report before us is absolutely silent on the issue of the sale of insurance by banks. Therefore, there

are no Federal restrictions being placed on State authorizations for the sale of any insurance products by banks or their subsidiaries. This stands in sharp contrast to the provisions reported by the Senate Banking Committee and, in some respect, to the compromise adopted on the Senate floor. This total silence is intended to leave the States totally free of Federal restrictions regarding insurance sales.

Regarding insurance underwriting, one must look to the conferees' revision of section 303 of the House amendment. Originally, section 303 included a general prohibition on insurance underwriting by State banks and their subsidiaries. Last night, the House accepted the Senate offer to grandfather the existing activities of State banks and their subsidiaries, thereby providing an important exception to the general prohibition.

The grandfather exception resembles the provision the Senate adopted on November 21, 1991. But there are two differences worth noting. First, the Senate grandfather clause was amended by Representative FRANK to require that the insured State bank, which may be underwriting insurance either in the bank or through a subsidiary, must be well capitalized to continue doing so. All the banks in Delaware currently underwriting insurance, as far as I know, meet this requirement.

The other difference is what is left out. The Senate language adopted on November 21, 1991, also contained a transition rule, giving banks underwriting insurance 1 year to terminate that activity if not protected by the grandfather clause. The transition rule was adopted in the Senate Banking Committee because the grandfather clause was written in a way specifically to exclude Delaware from its benefits. Thus, the transition rule basically meant that Delaware banks had 1 year to stop underwriting.

The action taken on the Senate floor had the effect of voiding the discrimination against Delaware and allowed Delaware banks the very same grandfather rights enjoyed by banks in other States which authorize their banks to underwrite insurance. Since all existing underwriting by banks was therefore grandfathered by the Senate action, the Senate offer to the House in conference did not include a transition rule.

The subsequent adoption of the Frank amendment, it might be thought, created a new reason for a transition rule; but it was not known at the time if the Frank amendment disqualified any institution, and still is not known. As a practical matter, the Frank amendment was offered and agreed to immediately before conference agreement on the issue with no discussion of its consequences.

So we go back to the point that the transition rule was omitted from the Senate offer because it was unnecessary. And it was unnecessary because current activities were grandfathered.

Had the grandfather clause protected only some current activities but not all, a transition rule would be necessary. But the grandfather clause does not appear to impose any limits on current activities. It does definitely limit future activities—but not current activities. The provision clearly protects current activities in any State. It is not confined to Delaware's boundaries or the boundaries of any other State.

Apparently, the grandfather clause, which was drafted originally to exclude Delaware, did not and does not limit its protection to the home State, so to speak, but rather covers any State in which the bank was providing insurance it underwrites. Thus, when Delaware was included within the grandfather clause, its banks obtained the same rights as others. Those rights are described as the "continuation of existing activities" in the head note preceding the text in the Senate bill.

That text states that underwriting activities that were ongoing as of November 21, 1991, may continue in the future in those States where the underwritten products are being provided. The limits are designed to insure that the grandfather clause does not provide a basis for expanded underwriting activity. Those limits are reasonable and fair.

Therefore, the conference agreement preserves the rights of State banks authorized to underwrite insurance to continue to underwrite the same type of insurance in any State in which they provided such insurance as of November 21, 1991.

Congress has acted wisely. By allowing Delaware to continue its effort to show how banks can become more competitive and more profitable, we will all be able to watch and learn from Delaware's leadership. There has never been a single bank failure in Delaware that has cost the FDIC a single penny. It is time that others learn to copy our example rather than seek to restrict our success.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator asks for the yeas and nays. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

RESOLUTION TRUST CORPORATION REFINANCING ACT OF 1991

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 3435, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3435) to provide funding for the resolution of failed savings associations and working capital for the Resolution Trust Corporation, and so forth.

The PRESIDING OFFICER. Who yields time? There are 15 minutes equally divided. The Senator from Utah is recognized.

Mr. GARN. Mr. President, it was my understanding that we were—I thought we were proceeding to a vote, and then 15 minutes and a vote on the RTC.

The PRESIDING OFFICER. Under the previous order, we were to proceed to H.R. 3435.

Mr. GARN. Very well. I misunderstood the unanimous-consent agreement.

The PRESIDING OFFICER. Will the Senator be willing to yield back time?

Mr. GARN. Mr. President, not yet. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Utah.

SECTION 1133

Mr. METZENBAUM. Mr. President, with regard to the conference report on S. 543, the banking legislation that is before the Senate today, I want to ask a few questions to Senator GARN, the ranking minority member of the Senate Banking Committee. I understand that section 1133 of the Senate banking bill dealing with the transfer of certain obligations of the failed institutions sold by the RTC is included in the conference report on S. 543. Am I correct about this?

Mr. GARN. The distinguished Senator from Ohio is correct that section 1133 was adopted as part of the conference agreement on the banking bill. This provision is intended to help the RTC dispose of its assets in order to be able to sell such assets at the best possible price, the RTC must not only be able to transfer them without obtaining any third-party consents, as FIRREA already provides, but it must also be able to provide assurance to purchasers that the assets will have value in the purchasers' hands. It is this concern that section 1133 addresses.

Mr. METZENBAUM. It is also my understanding, based on my conversation with the distinguished Senator from Utah last week on the floor of the Senate, that this provision does not prejudice antitrust claims that are in dispute in any litigation currently pending in Federal court. Is my understanding with the Senator on this point correct?

Mr. GARN. Yes, Mr. President, the Senator is correct that I stated to him last week that this legislation addresses only the ability of a services provider to refuse to honor servicing rights purchased from the Resolution Trust Corporation. It would not affect any legal claims or any Federal antitrust litigation.

Mr. President, may I just continue to say that while I am not happy with the House-passed bill, because it only has $25 billion in it, may I remind my col-

leagues that this money has already been charged. It is very much as if we said you run up your credit card and now you are going to refuse to pay the bill. As regrettable as it is, we must provide this money to the RTC or we will simply dramatically run up the costs of the S&L bailout. So I hope no one would play games with this, run home and say "I voted against that." I would love to run against somebody who increased the costs by playing games with this. As difficult as it is, it must be done, and we cannot repeat the mistakes of 1986, and cause the dramatic increase in the cost of the RTC and the S&L bailout.

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

Mr. DOMENICI. Will the Senator yield some time to the Senator from New Mexico?

Mr. GARN. I am happy to yield 2 minutes to the Senator from New Mexico.

Mr. DOMENICI. Will the Senator yield 3 minutes?

Mr. GARN. I will be happy to yield 3 minutes.

Mr. DOMENICI. Let me first say, at the request of the leadership, I will not object. But, frankly, I have some serious reservations about the new structure of the RTC. I have some serious reservations about the affordable housing provisions unless it was made subject to appropriations. It may have been. I do not know. I still do not have the bill to look at. It would be a very serious departure from past practices if these affordable housing provisions were not subject to appropriations.

In addition, one of the most severe problems we are having in real estate market is that many of these federally chartered institutions are causing real estate to be dumped on the market where it could be held. If you can hold it for a reasonable period of time you have a chance of bringing the market back up instead of flooding it more.

I would have offered an amendment that I am sure the Senate would have adopted giving more flexibility to the OTS and RTC and others in regulatory positions so that S&L's would be allowed to restructure their real estate portfolios and would not have to sell real estate that they are holding. Thrifts are faced with a statutory deadline to divest of real estate subsidiaries by 1994. Under the amendment the regulators could allow thrifts to hold on to real estate development portfolios under regulation for a longer period of time without matching dollar for dollar capital against these investments. This would allow thrifts to continue their business and have more capital to lend. This would mean more credit for mortgage loans thereby easing the credit crunch, increasing the availability of credit for affordable housing, and a stimulating the economy.

We are not going to be able to do this. We do not have any other vehicle to amend the regulatory authority. But we will try as soon as possible.

With that in mind, I am going to send the amendment to the desk, showing what we would have offered had we had the time and had this amendment been in order. I am going to send it up for those purposes.

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

At the appropriate place in the bill insert the following:

SEC. . CREDIT AVAILABILITY.

Section 5(t)(5) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(5)) is amended by adding at the end the following new subparagraph:

"(F) EXCEPTIONS GRANTED BY DIRECTOR.—

"(i) IN GENERAL.—The Director may grant such limited and temporary exceptions from subparagraphs (A) and (D) as the Director deems necessary and appropriate, if the Director determines that—

"(I) extraordinary circumstances exist or that economic conditions at the national, regional, or local level are such that an insufficient opportunity exists for the association to divest a subsidiary engaged in activities not permissible for a national bank or any investment in or extension of credit to such subsidiary; and

"(II) the conditions set forth in paragraph (7)(C)(i) of this subsection are satisfied.

"(ii) LIMITATION.—An exception under this subparagraph applies only to the amount of the savings association's investments in or extensions or credit to a subsidiary as of April 12, 1989, and the amounts that have been or will be expended to complete projects or investments that were initiated by such subsidiary prior to the date of enactment of this subparagraph. In granting an exception pursuant to this subparagraph, the Director shall require the same percentage deduction from capital for amounts invested and credit extended as of April 12, 1989, and for amounts invested and credit extended thereafter.

"(iii) DURATION.—No exception under this subparagraph shall be effective after July 1, 1999.

"(iv) AMOUNT.—No exception shall reduce the percentage deduction from capital to a percentage less than that required as of the date of enactment of this subsection for investments and extensions of credit made prior to April 12, 1989.".

Mr. GARN. Mr. President, I yield 1 minute to the Senator from New York and thank the Senator from New Mexico for his cooperation.

Mr. D'AMATO. Mr. President, let me suggest that the Senator from New Mexico has hit upon an area that we must act on to save taxpayers billions of dollars—billions. As a matter of fact, because of the inflexibility that exists presently, we are forcing institutions that otherwise could make it, that could be profitable, we are going to continue to force them needlessly to become children of the RTC and the taxpayers of America. It does not make sense.

For the first time we have a regulator who says, yes, I could use additional flexibility—Mr. Taylor at the FTC. My gosh, let us wake up.

I hope that we enact this legislation as a priority when we come back. We need it to save the taxpayers some money and also prop up the real estate market instead of forcing divestiture.

I commend the Senator from New Mexico.

The PRESIDING OFFICER. Who yields time? The Senator from Utah has 3 minutes and 12 seconds.

Mr. GARN. I reserve the remainder of my time.

Mr. RIEGLE. Mr. President, this again is a piece of legislation that has to be enacted. This is to provide funds to liquidate failed institutions, and to make good on the deposit insurance guarantees of individuals who put their savings in federally insured institutions.

The bill is a compromise bill in the sense that it provides only partial funding, carrying over into the early part of next year. It does importantly revise the managerial structure at the RTC. There have been a lot of problems there, as the repossessed assets from failed S&L's come into that organization.

They have been very slow and sluggish in many respects, in being able to turn those assets around and sell them off efficiently to get full value. They have made some progress, and things have improved to some degree. But part of the problem has been established in our committee record in hearings that a major failure of the engineering design of the managerial structure itself has been in part responsible.

We saw that coming in the beginning, and tried to change it at the outset. The administration resisted those ideas. So we now make those changes here in this legislation.

So I can say to my colleagues that we think this will provide a more efficient decisionmaking process with respect to the RTC.

It is still a difficult job. They still have a lot of work to do. But this is essential legislation. It must be passed today. I urge my colleagues to support it.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. Mr. President, might I have 30 seconds?

Mr. RIEGLE. I yield 1 minute to the Senator.

Mr. CONRAD. Mr. President, I was one of only eight Senators to vote against final passage of the original Senate version of the Financial Institutions Reform, Recovery and Enforcement Act [FIRREA] in 1989, and I spoke out against the passage of the conference report when it was rammed through this floor by voice vote in August 1989.

That original act provided long-term financing of $50 billion for the RTC. But that was not enough.

The Administration was back for more money at the beginning of this

year. The Resolution Trust Corporation Funding Act of 1991 provided another $30 billion of taxpayer assistance to the bailout effort.

And again, that wasn't enough. Now the Administration is back again, this time for another $80 billion.

For the reasons I will make clear in this statement, I will cast a "no" vote on this request for additional funding for the Resolution Trust Corporation.

COST OF CLEANING UP THE S&L MESS

This latest appropriation puts the cost to the taxpayer at $160 billion for the S&L's that have failed since August 1989. Keep in mind, as huge as this figure is, it does not include the funding for the behind-the-scenes bailout deals made in 1988—those cost over $65 billion. Nor does it include any of the funding for the banks that are going under—that funding is contained in the Banking bill that is being passed separately for another $70 billion. Nor does it include funding for any of the 100's of S&L's expected to go under after August 1992, when the RTC is supposed to be out of the takeover business.

From start to finish, this has been a debacle of the worst order.

There is no question that we have to make good on the insured deposits of depositors. I believe that, and so does every other member of this body.

However, it is only now becoming apparent how widespread the criminal activity was among the operators of the now defunct S&L's. The General Accounting Office recently reported that criminal activity played a role in the failure of 58 percent of the S&L's taken over as of June 30 of this year. Talk about being asleep at the switch. Had this Administration no idea what was going on in this Nation's financial institutions?

But I did not come here today to review the past.

Instead, I am here to warn that the free and loose attitude that led to the mess still exists and is making the mess worse.

Last week, I came to this floor to report on never-released-before audit reports of the FDIC's contracts with law firms. Those reports revealed a disturbing pattern of double charges, padded billings, and other rip-offs by attorneys hired by the Government to help clean up the S&L mess.

However, additional reports have surfaced in other areas that suggest an unending trail of mismanagement and abuse throughout the bailout system.

Not all employees of the RTC are bad—most are hardworking and honest. But there are some bad things going on. I will say, here, that I am grateful to Senator RIEGLE and his staff for working to include an extension of whistleblower protection to employees of the RTC and other banking agencies and to the employees of conservatorships, receiverships, and its contractors in the conference report on the banking bill. I was prepared today to offer an amendment to this bill to make the whistleblower protection retroactive, but in working with Sen. RIEGLE'S staff we were able to have that provision added last night in conference.

GAO AUDIT OF RTC'S FINANCIAL STATEMENTS REVEALS MISMANAGEMENT

From the very beginning, the General Accounting Office has been critical of the bailout effort and has called for tighter controls in RTC's operations.

Let me read a few statements from the General Accounting Office's most recent audit of the RTC's books. This review of RTC's 1990 financial statements was released just 4 weeks ago. I must say I have never read as harsh a financial statement audit as this. These are direct quotes from the audit report:

Our work indicates that the Corporation's estimated recoveries from receivership assets could be overstated due to the lack of strong internal controls over receivership operations, flaws in the Corporation's methodology for determining the recovery value of receivership assets, and significant uncertainties related to the performance of the economy in general and real estate markets in particular.

Based on our limited control testing performed in early 1991, we found that receiverships lacked strong controls during 1990 in many key areas related to cash receipts, disbursements, and beginning balances. As a result, we cannot be reasonably sure that the amounts the receivershisp reported are accurate or that receiverships have collected all that they should.

The appropriateness of the Corporation's accounting for transactions related to the purchase of assets and assumption of liabilities at resolution is questionable * * *. We question the Corporation's current policy of offsetting the escrowed fund balances against a portion of the receivables due from receiverships for depositor liabilities paid. This treatment reduced the Corporation's assets and liabilities by $32 billion on its December 31, 1990, balance sheet.

The Corporation could be overstating the amount it will recover from its receiverships because it did not have strong internal controls over receivership operations in 1990. Without internal controls over receivership systems, receiverships might not recover all that they should due to fraud, mismanagement, or theft of assets.

* * * offices did not adequately separate key duties for handling receipts.

* * * officers lacked adequate controls to ensure that duplicate payments were not made to vendors, servicers, or other recipients of funds from receiverships.

* * * offices lacked documentation to support receiverships' beginning financial statement account balances. As a result, some receiverships' opening account balances for assets and/or liabilities could not be verified. For example, for 3 of the 17 account balances we tested for a receivership in one consolidated office, receivership personnel could not locate any information.

The methodology used by the Corporation to determine the recovery value of individual receivership assets at December 31, 1990, was not statistically valid * * *. Our review of the 1990 methodology indicated weaknesses that could have resulted in material differences to expected recoveries from receivership asset sales.

This audit report really says it all. To me, it says that the agency that was created to clean up the mess is a part of the mess.

RTC EMPLOYEES REPRIMANDED FOR CRITICISM OF BULK SALE

During the past 2 months, disturbing news reports have surfaced which suggest irregularities in at least one of the RTC's so-called bulk sales, Significant questions have surfaced regarding the RTC's recent deal with Patriot American Investors—a partnership of 2 Canadian and 2 American investors.

News organizations have reported in recent weeks that at least 3 RTC employees have been reprimanded because the employees expressed concerns that the Government would lose taxpayer money on the deal with Patriot.

The controversies within RTC began late this summer when RTC officials in Washington approved 3 bulk sales deals: one with Patriot, one with General Electric Capital Corp., and one with Tishman Portfolio Partners. While concerns have been raised about all three deals, most of the complaints have been about the deal with Patriot.

And a sweet deal it is.

For starters, Patriot was allowed to go around the country and pick and choose the properties it wanted on a noncompetitive basis.

It did not matter if local officials already had contracted to sell the properties to other buyers, Washington is going to let Patriot have the buildings.

Patriot is going to get an office building in Houston for $5 million even though a cash contract had been signed with another buyer that was willing to pay $8.5 million.

Patriot is going to get the Bourbon Orleans hotel in New Orleans for $3 million less than the $11.1 million offered by another buyer.

And in San Antonio, Patriot is going to get the Bexar Savings building even though the city employee's pension fund had made a better offer of $9.85 million.

And in Dallas, Patriot is going to get an apartment complex that a local firm was working to buy for $10.5 million.

In total, Patriot is getting a package of projects worth nearly half-a-billion dollars at fire sale prices. They did not have to compete. They did not have to bid. All they had to do was go around the country and pick them out. It didn't matter that the properties were already under contract to other buyers.

But sadly, when RTC workers complained about the handling of these deals the employees got reprimands.

The New York Times reported on October 7 that two regional employees wrote a memo to Washington that said "The Government stood to lose tens of millions of dollars if it sold the properties under the Patriot agreement."

The article went on, "Senior agency officials in Washington have acknowledged that they purged the memo in which the complaint was made and punished the officials who wrote it." The Times said the RTC officials, "acknowledged in interviews that the Patriot deal had involved delays, mistatements and suppression of internal criticism. But they called these matters insignificant."

The RTC management really got this one backward.

The ones that should be reprimanded are the ones that let this deal go through. Not only was Patriot allowed to go around the country and pluck prime properties already under contract at higher prices to other buyers. Patriot also got risk free, interest free financing for its purchases. No interest for the first 7 years, and if the property loses money, Patriot can give it back to the government at no loss to themselves.

Who put this sweetheart deal together?

Patriot's Washington dealmaker is Richard Hohlt, a lobbyist and fundraiser that the President appointed to the board of the Student Loan Market Association last year. The New York Times reported in early October, "L. William Seidman, the chairman of the Resolution Trust Corporation, described Mr. Hohlt as a good friend who has been trying to hire him after he retires later this month."

Sales commissions ranging from $5 to $10 million on the package will go to the brokerage firm with ties to Frank Carlucci and Fred Malek. Both are close to the administration.

Against power like that, the concerns expressed by the employees about this deal are simply being snuffed out.

In fact, it was reported on November 13 that a third employee now faces disciplinary action or termination for his part in attempting to keep the Bourbon Orleans property out of the package going to Patriot.

Because of these reported reprisals, I have felt very strongly that whistleblower protections be applied retroactively.

NEW INVESTIGATIVE REPORTS REVEAL OTHER ABUSES

Let me turn to other recent reports that raise new concerns with RTC's operations.

The inspector general of the RTC has been given the responsibility by Congress to investigate specific contracts and expenditures for waste, fraud and abuse. The Office is completing its first investigations.

I have sought and received individual audit reports done by the inspector general and summaries of investigative activity. Generally, the cases that I have reviewed and am about to to discuss have not been released to the press.

Keep in mind that the cases I am about to discuss do not involve actions that led to the S&L failures. Instead, they involve the operations of the RTC itself or involves firms that the RTC has hired at taxpayer expense to help clean up the S&L mess.

The bailout effort has fostered get rich quick schemes at the taxpayer's expense.

A real estate firm that was hired by the RTC found a buyer willing to pay $800,000 for an RTC property. However, the firm figured it could make more money by selling the property for $560,000 to a third party investor. It worked this way: The investor turned around and sold the property to the original buyer at the original $800,000 price. Out of the difference, the investor paid a $50,000 "finders fee" to the real estate firm. The contractor came out fine, but the government lost $240,000.

A $12,000/month computer database contract for maintaining lists of RTC contractors was expanded to $450,000 per month without competitive bidding and without any documentation or justification as required by FIRREA and stated in RTC policies.

LACK OF OVERSIGHT RESULTS IN IRREGULARITIES IN CONSERVATORSHIP

In a major audit of the managing agent hired by the RTC to serve as the conservator of the failed TaylorBanc S&L in Texas, investigators found the following irregularities (Note—the quotations are taken directly from an inspector general's report dated August 19, 1991):

High risk loan programs were aggressively expanded without proper controls over accounting lending practices, or documentation, "resulting in questionable loans and undetermined losses."

A $30 million loan portfolio was split into 13 separate loan portfolios in order to fall within the $2.5 million reporting threshold. The bidding process also appeared to involve irregularities. The loans were sold to one purchaser, Bluebonnet Savings Bank.

A property sale appeared to involve insider dealing and a special financing deal. "TaylorBanc foreclosed on and sold a commercial property based on inadequate appraisals and poorly documented case files." * * * "Also, the file documentation indicates that the purchaser may have had prior knowledge of RTC's acceptance price." "This sequence of events implies that the sale may not have been an arms-length transaction."

The inspector general found the RTC's oversight of the TaylorBanc agent to be at fault:

RTC's oversight of TaylorBanc was not effective in assuring that the managing agent's actions were consistent with conservatorship objectives. As a result, RTC has incurred additional expenses, liabilities, and risk."

We found no evidence that RTC oversight personnel questioned the management or expansion of the loan programs through the review of the operating plan or RTC's site visitation * * *

Oversight was minimal * * * However, with the degree of autonomy that RTC management provides its managing agents, strong and effective oversight is RTC's only defense to prevent irregularities and poor management by its agents. * * * Overall, we found that RTC's oversight of the TaylorBanc conservatorship was cursory and insufficient to ensure that its fiduciary responsibilites were met and its employees were operating consistent with RTC's mission.

RTC OFFICE MANIPULATES BIDDING PROCESS

In an audit completed just last week, on November 18, significant irregularities were identified in the bidding process for asset management contracts operated by RTC's Northeast Consolidated Office [NECO] outside of Philadelphia. This is the first audit of any of RTC's asset management contracting operations. The details of this audit have not previously been released to the press.

This RTC office is 1 of 8 offices around the country that hands out the contracts for asset management. As of July 1, these offices had awarded 130 contracts for the management of $24 billion of assets.

In the audit of the Northeast office, the handling of six such contracts was reviewed by the Inspector General. The fees awarded range from $780,000 in the smallest contract to $12.2 million for the largest contract. In the audit, the Inspector General has found:

"In brief, NECO did not follow or effectively apply RTC contracting policy in soliciting and evaluating firms for Standard Asset Management and Disposition Agreements [SAMDA's]. Specifically, we noted problems in the development of the Solicitation of Services [SOS], selection of firms for solicitation, overall assessment of firms' technical capabilities, actual scoring of technical proposals, and the internal controls over the solicitation and evaluation processes.

"The most significant of these weaknesses related to (1) not allowing all eligible firms to submit bids, (2) not considering cost as a factor in awarding contracts, and (3) not awarding bonus points to a minority and women-owned business firm, thereby inappropriately excluding the firm from consideration * * * these weaknesses affected the actual selection and competitiveness of contract awards. Taken as a whole, they raise doubts as to the fairness of NECO's solicitation, evaluation, and award processes."

The office reduced competition on two bids when the office simply photocopied a company list from a previous bid and used that list for the other two solicitations. Nine firms were excluded from consideration this way on the other two solicitations.

Incoming bids were improperly documented thus making the settlement of any disputes difficult. For example, bid proposals did not get date stamped, or held and date stamped after the proposal deadline date.

"The NECO contracts group significantly modified the standard solicitation of services. * * * These modifications ultimately affected the outcome of one contract award and created the appearance of favoritism in the selection of the contract awardee." The loser—the company that offered the lowest bid—was a minority-owned firm. The 3-year contract was awarded for $7.85 million.

ADMINISTRATION ENGAGED IN PUBLIC RELATIONS EFFORT TO IMPROVE IMAGE OF RTC

Recently, the administration has embarked on a public relations mission to

put a good face on the problems of the bailout effort.

The new CEO of the Resolution Trust Corporation, Albert Casey, had an op-ed in the New York Times on Friday. Casey said:

We're performing our mission ahead of schedule, selling or closing thrifts efficiently, selling undesirable assets despite a sluggish economy, establishing sound recordkeeping and recovering taxpayers' dollars promptly * * *. In short, the Resolution Trust Corporation has an outstanding record and should be given the money it needs to complete its job.

And Monday, Peter Monroe, the president of the RTC Oversight Board, said in a column in the Washington Post:

While no one wants the responsibility of cleaning up the S&L's, Congress must realize that if resolutions are put on hold, there will be no one to blame but Congress itself for increased taxpayer costs and the denial of protection for individual depositors.

I have news for Mr. Monroe. Congress isn't to blame. Congress doesn't like voting for this because it is a mess created by the free and loose attitude of this administration. The regulatory oversight of the institutions was free and loose—58 percent of the failures have involved criminal activity.

Now, the administration's handling of the bailout effort is free and loose.

As far as I know, I am the only Member of Congress to have reviewed the recent audit reports by the Inspector General. But I can tell Mr. Casey and Mr. Monroe, that a Member of Congress doesn't have to read those reports to come to the same conclusion. All they have to do is read their mail or read their newspapers.

NO RESPONSE ON VALLEY CITY BANK BUILDING

We have all heard countless stories about the mismanagement of the RTC—how someone makes an offer on an RTC property, the RTC turns it down, only to sell it a few days or weeks later for substantially less than that original offer.

I am from a State where people watch their money very carefully. We've had severe economic problems, especially in our agriculture and energy sectors. We've had just three institutions fail.

But even in North Dakota I have witnesses some classic mistakes in operation by the RTC. Let me read from a letter I received from the president of a small, local bank in Valley City, ND, on June 21 of this year:

You will note by the copies of the enclosed letters that the Farmers and Merchants Bank of Valley City has attempted to express an interest in the former Midwest Federal Savings building here in Valley City, ND. The fact that we have received no responses from any of these communciations or telephone calls has been very frustrating to myself and the Board of Director's of the bank. We frankly have outgrown our present facilities and had hoped to negotiate with the RTC on the acquisition of the Midwest building.

On June 1 we broke ground for an addition to our existing facility and the attached RTC sales proposal announcing the sales price of the building in question appeared in our local newspaper on June 6, 1991. The frustrations continue, we question whether the taxpayers are being well served by the procedures that RTC has elected to follow.

Talk about inefficiency. This firm had tried for 9 months to talk to the RTC about the purchase of the building without ever even getting a response to its inquiries. One of the inquiries was sent on their behalf by the State banking commissioner. Even he could not get a response out of the RTC.

This may seem like a small example to some, but to the local bank in Valley City that is doing its best to survive, and indeed, prosper in the face of untold challenges, it is a very real example of a system that simply does not work.

COUNTLESS NEWS STORIES RECITE EXAMPLES OF MISMANAGEMENT

We have all seen the endless headlines. There has been story after story telling of the mismanagement of the bailout by the administration.

The headlines have read:

"Thrift Agency Sends Co-Op Projects Into Default on Underlying Mortgages," Wall Street Journal, 11/15/91.

"RTC Office Art Stirs a Storm in Kansas: Regional Chief Adorns Headquarters With $26,000 in Paintings, Sculpture, Prints," Washington Post, 6/12/91.

"Thrift Cleanup Called Slipshod by GAO," Washington Post, 6/11/91.

"S&L Asset Fire Sale May Lose 40 Cents Per Dollar," Los Angeles Times, 7/14/91.

"Bad Bets: Many Big S&L Losses Turn Out to Be Due to a Financial Gamble," Wall Street Journal, 8/9/91.

"Thrift Rescue Plan In Southwest Creates New Group of Victims: Homeowners, Firms Contend Federal Aid Encourages S&L Neglect of Properties," Wall Street Journal, 7/10/91.

"Fight Brews Over RTC's Operations," Washington Post, 6/20/91.

"CBO: Failure to Close S&L's Added $60 Billion to Rescue," Washington Post, 6/20/91.

"Peat Marwick Is Subject of Probe Over Partner Loans," Wall Street Journal, 5/23/91.

"Government Checking S&L Audits: Peat Marwick Faces Probe for Favoritism," Washington Post, 5/23/91.

"Ernst & Young Faces Lawsuit From the SEC: Charges Center on Loans Received by Accountants During Audit of Bank," Wall Street Journal, 6/14/91.

"Control Faulted in New England Bank's Failure," Wall Street Journal, 6/14/91.

"Real Estate Industry Hisses at RTC Property Auction," Wall Street Journal, 9/12/90.

"RTC's Many Miscues In Selling Off Property Rattle Local Markets: Battered in S&L Mess, People in Phoenix Say Agency Is Too Slow and Bureaucratic," Wall Street Journal, 3/28/91.

"Sale of Failed Thrifts' Assets Sometimes Leaves Regulators Advised by Parties With Most to Gain," Wall Street Journal, 4/3/91.

"RTC Drops Contractor Over Lawsuit, Loan-Default Disclosure," Washington Post, 6/27/91.

"U.S. to Seek Damages From Jones Day, Alleging It Concealed Thrift's Problems," Wall Street Journal, 4/3/91.

"Regulators Review Salomon Contract: Brokerage Made $3 Million From RTC Work," Washington Post, 8/28/91.

"Minorities Shortchanged in S&L Bailout," Los Angeles Times, 7/25/91.

"Bank Bailouts Are Bonanza for Lawyers," Wall Street Journal, 11/21/91.

PROOF IS IN THE BOTTOM LINE: RTC'S POOR PERFORMANCE IS ADDING TO THE COST OF BAILOUT

There is absolutely no question that the RTC and its employees are under intense pressure.

Given the underlying responsibility of the RTC and the billions and billions of dollars involved, the risk and potential of waste, fraud and abuse is extreme. While the General Accounting Office has repeatedly warned of the need for tight controls, the free and loose attitude of the Administration has continued.

We are throwing bad money after bad money.

Mr. President, I ask unanimous consent that a table I am submitting be printed in the RECORD.

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

RESOLUTION TRUST CORPORATION—INSTITUTIONS RESOLVED THROUGH SEPTEMBER 30, 1991

[In thousands of dollars]

OBS	Date of resolution	Name of institution	City	State	Resolution type [1]	Assets at resolution	Liabilities at resolution	Resolution cost [2]
45	2/02/90	Peoples Sav. Assoc., F.A	St. Joseph	MI	P&A	73,636	83,633	5,579
46	2/02/90	Bright Banc Sav. Assoc.	Dallas	TX	P&A	2,683,036	3,685,369	1,383,879
47	2/06/90	Skokie Fed S&L Assn., FA	Skokie	IL	P&A	732,750	751,203	168,414
48	2/09/90	Community S&L Assoc.	Fond Du Lac	WI	P&A	130,456	150,837	36,744
49	2/09/90	Colorado S&L Assoc.	Englewood	CO	P&A	43,770	51,761	18,207
50	3/02/90	Centennial Fed S&L Assoc.	Greenville	TX	P&A	50,969	74,403	30,968
51	3/09/90	San Antonio Sav Assoc. FA	San Antonio	TX	P&A	2,221,110	2,642,205	891,600
52	3/16/90	Bankers S&L Assoc.	Galveston	TX	P&A	88,657	103,864	22,698
53	4/12/90	Columbia Fed. Savings Bank	Westport	CT	P&A	112,282	139,942	30,341
54	4/13/90	Meridian Savings Assoc.	Arlington	TX	IDT	114,231	498,456	417,833
55	4/20/90	First Fed. S&LA of Hutchinson	Hutchinson	KS	P&A	122,349	175,212	71,993
56	4/20/90	Baltimore Fed Financial FSA	Baltimore	MD	IDT	1,078,364	1,320,202	323,215
57	4/20/90	Bedford Savings Assoc.	Bedford	TX	P&A	88,702	119,508	59,842
58	4/27/90	First Fed. S&LA of the Florida	Key West	FL	P&A	162,097	203,076	65,662

RESOLUTION TRUST CORPORATION—INSTITUTIONS RESOLVED THROUGH SEPTEMBER 30, 1991—Continued

[In thousands of dollars]

OBS	Date of resolution	Name of institution	City	State	Resolution type [1]	Assets at resolution	Liabilities at resolution	Resolution cost [2]
59	4/27/90	Libertyville Fed S&L Assn.	Libertville	IL	P&A	64,652	79,923	9,395
60	4/27/90	Financial Fed. S&L Assoc.	Joplin	MO	P&A	138,990	174,887	57,937
61	4/27/90	Mid Missouri S&L Assn. FA	Boonville	MO	IDT	29,008	47,586	15,311
62	4/27/90	Heritagebanc Sav. Assoc.	Duncanville	TX	P&A	135,320	174,411	56,385
63	4/27/90	Westco Savings Bank, FSB	Wilmington	CA	IDT	107,143	134,425	26,055
64	4/27/90	The Guardian Fed S&L Assn.	Bakersfield	CA	IDT	16,031	27,548	18,726
65	4/27/90	New Guaranty Fed S&L Assn.	Taylor	MI	P&A	174,250	187,827	25,479
66	4/27/90	First Fed. S&L Assoc.	Bakkersfield	CA	P&A	98,535	112,466	15,817
67	5/04/90	Guaranty Fed. S&L Assoc.	Birmingham	AL	P&A	269,301	322,129	86,356
68	5/04/90	Arrowhead Pacific Fed Sav Bank	San Bernardino	CA	Payoff	54,213	88,782	35,916
69	5/04/90	Peoples S&L Assn.	Parsons	KS	IDT	50,242	59,539	14,727
70	5/04/90	Mid-America Fed S&L Assoc.	Parsons	KS	IDT	65,014	71,433	9,906
71	5/04/90	The Barber County S&L Assn.	Medicine Lodge	KS	IDT	40,241	44,371	15,262
72	5/04/90	Fidelity Fed. Sav. Bank	Corinth	MS	P&A	66,168	142,102	90,733
73	5/04/90	United Guaranty Fed Sav Bank	Tullahoma	TN	IDT	6,329	8,215	2,646
74	5/04/90	First State Fed Sav Assn	San Antonio	TX	P&A	214,674	382,528	271,276
75	5/04/90	Mission SA of Texas	San Antonio	TX	Payoff	44,276	96,861	64,755
76	5/04/90	La Hacienda Savings Assn	San Antonio	TX	IDT	53,744	133,191	94,743
77	5/04/90	First Fed. Savings Bank	East Alton	IL	IDT	35,517	40,359	8,286
78	5/04/90	American Interstate Sa. Fa	Los Angeles	CA	Payoff	19,872	20,528	2,061
79	5/04/90	Sierra S&L Assoc., FA	Beverly Hills	CA	P&A	16,170	30,484	7,718
80	5/04/90	Security Fed. Savings Associat	Garden Grove	CA	IDT	60,910	64,042	2,934
81	5/08/90	Home FS & LA of Centralia	Centralia	IL	IDT	34,394	37,872	6,733
82	5/08/90	Peoples S&L Assoc. FA	Streator	IL	IDT	31,224	35,483	17,600
83	5/11/90	Washington S&L Assoc.	Stockton	CA	IDT	67,224	71,430	4,653
84	5/11/90	Royal Oak S&L Assoc.	Manteca	CA	IDT	20,370	23,145	2,751
85	5/11/90	Sun Savings Assoc., F.A.	Kansas City	KS	IDT	137,583	174,691	65,500
86	5/11/90	Topeka Sav., A FS&LA	Topeka	KS	IDT	92,503	117,089	47,439
87	5/11/90	First Fed. S&L Assoc.	Eunice	LA	IDT	11,397	15,438	7,539
88	5/11/90	Peoples FS & LA of Thibodaux	Thibodaux	LA	IDT	17,355	20,039	9,964
89	5/11/90	State Mutual Fed S&L Assn	Jackson	MS	P&A	6,270	8,793	5,866
90	5/11/90	Platte Valley Sav., A FS&LA	Gering	NE	IDT	242,864	338,757	169,145
91	5/11/90	Ameriway Savings	Houston	TX	P&A	97,232	247,850	173,444
92	5/11/90	First Equity Savings Assoc., F	Tomball	TX	P&A	66,378	140,169	79,764
93	5/11/90	Cabrillo Fed Savings Bank	San Jose	CA	P&A	40,821	43,282	2,025
94	5/11/90	Cross Roads, FS&LA, FA	Checotah	OK	IDT	11,541	20,232	11,150
95	5/15/90	Amerimac Sav. Bank, FS	Hillsboro	IL	IDT	14,234	23,130	10,358
96	5/16/90	Hallmark S&L Assoc., FA	Plano	TX	Payoff	119,854	193,300	117,046
97	5/18/90	Phenix Fed S&L Assn, F.A	Phenix City	AL	P&A	125,659	162,281	74,364
98	5/18/90	City Federal S&L Assoc	Oakland	CA	IDT	16,311	27,584	11,897
99	5/18/90	Madison County Fed S&L Assn	Granite City	IL	IDT	95,215	109,475	27,292
100	5/18/90	Shawnee Fed. S&L Assoc	Topeka	KS	P&A	201,383	210,236	18,200
101	5/18/90	Horizon Fed. S&L Assoc	Metairie	LA	Payoff	361,581	499,122	442,180
102	5/18/90	First Fed. S&LA of Southeast M	Cape Girardeau	MO	P&A	253,642	310,033	68,321
103	5/18/90	Midwest Fed. S&L Assoc	Nebraska City	NE	IDT	100,092	127,888	37,143
104	5/18/90	Community Fed S&L Assn	Newport News	VA	P&A	8,694	10,042	1,606
105	5/18/90	American Sav. of Colo. A FS&LA	Colorado Springs	CO	P&A	791,128	876,877	338,847
106	5/18/90	Germantown Trust Sav Bank	Germantown	TN	IDT	101,754	117,071	34,570
107	5/18/90	Broadview Federal Sav Bank	Cleveland	OH	P&A	1,196,358	1,246,808	187,967
108	5/18/90	Pioneer Savings, F.A	Plymouth	IN	P&A	69,247	80,596	9,264
109	5/18/90	Peoples S&L Assoc., F.A	Hampton	VA	P&A	20,275	21,850	4,092
110	5/18/90	Cornerstone Fed Sav Assn	Houston	TX	P&A	74,949	88,747	24,270
111	5/22/90	North American FSA	San Antonio	TX	Payoff	51,518	86,454	43,121
112	5/25/90	Financial Security S&L Assn	Delray Beach	FL	P&A	76,343	107,847	46,519
113	5/25/90	First Fed. S&L Assoc	Atlanta	GA	IDT	158,946	185,508	35,302
114	5/25/90	Family Saving Bank, F.S.B	Sapulpa	OK	IDT	48,380	48,832	3,053
115	5/25/90	Deseret S&L Assoc., F.A	Salt Lake City	UT	P&A	128,417	220,690	99,204
116	5/25/90	Durand Fed. S&L Assoc	Durand	WI	IDT	75,910	106,705	49,448
117	5/25/90	Mountainwest S&L Assn, A FS&LA	Ogden	UT	P&A	156,864	204,510	67,159
118	5/25/90	Otero S&L Assoc	Colorado Springs	CO	IDT	389,953	516,540	256,880
119	5/25/90	Horizon Financial, FA	Southampton	PA	P&A	1,746,685	2,010,917	332,758
120	5/25/90	Hearne Building & Loan Assn., F	Hearne	TX	Payoff	23,345	24,938	5,263
121	5/25/90	First Fed. S&LA of Brenham	Brenham	TX	IDT	104,298	120,622	36,799
122	5/29/90	Concordia Fed Bank for Savings	Lansing	IL	P&A	348,770	398,276	89,817
123	5/31/90	Sun Country SB of New Mexico	Albuquerque	NM	Payoff	120,330	189,690	44,655
124	5/31/90	Western S&L Assoc, FA	Phoenix	AZ	P&A	4,083,411	4,525,423	1,728,119
125	6/01/90	First Venice S & LA	Venice	FL	P&A	49,220	55,705	5,339
126	6/01/90	First of KS Savings, a FS & LA	Hays	KS	IDT	30,836	35,819	6,493
127	6/01/90	Fontainebleau Fed Sav Bank	Slidell	LA	IDT	31,508	45,790	26,582
128	6/01/90	Spindletop Sav. Assn, F.A	Beaumont	TX	IDT	181,967	344,209	250,078
129	6/01/90	FSA of the Southwest	Kilgore	TX	IDT	32,114	39,949	14,960
130	6/01/90	Lafayette S&L Assn., FA	Gretna	LA	IDT	22,802	24,155	7,779
131	6/01/90	New Braunfels S&L Assn, FA	New Braunfels	TX	IDT	38,864	76,588	43,764
132	6/01/90	Saratoga FS&LA	San Jose	CA	IDT	82,793	76,175	11,133
133	6/01/90	Financial FS & LA	Fresno	CA	Payoff	28,539	29,237	4,690
134	6/08/90	Gateway Fed Savings Bank	San Francisco	CA	P&A	30,469	97,975	68,864
135	6/08/90	First Fed. S&L Assoc	Largo	FL	IDT	262,180	346,831	106,063
136	6/08/90	Brickellbanc Sav. Assoc.	Miami	FL	IDT	30,228	40,709	12,073
137	6/08/90	American S&L Assoc., FA	New Orleans	LA	IDT	54,450	63,859	33,537
138	6/08/90	Gibraltar S&L Assoc., FA	Annapolis	MD	P&A	27,786	31,179	9,644
139	6/08/90	American Fed. S&L Assoc.	Albuquerque	NM	P&A	134,506	165,836	50,969
140	6/08/90	Valley Savings Bank, FSB	Roswell	NM	Payoff	129,693	249,603	130,502
141	6/08/90	Murray Fed. S&L Assoc.	Dallas	TX	P&A	894,486	1,193,646	504,185
142	6/08/90	Southside Fed. S&L Assoc.	Austin	TX	Payoff	39,753	47,543	17,415
143	6/08/90	American Savings, A FS&LA	Salt Lake City	UT	P&A	1,600,630	1,788,431	284,421
144	6/08/90	Lincoln S&L Assoc., FA	Miami	FL	IDT	181,694	200,511	59,418
145	6/08/90	Royal Palm Fed S&L Assoc.	West Palm Beach	FL	IDT	492,136	520,367	153,679
146	6/08/90	East Texas S&L Assoc., FA	Tyler	TX	P&A	234,649	260,178	86,393
147	6/08/90	Guadalupe S&L Assoc., FA	Kerrville	TX	Payoff	23,900	25,256	5,402
148	6/08/90	Aspen Savings Bank F.S.B.	Aspen	CO	IDT	115,367	128,919	31,848
149	6/15/90	Blue Valley Fed S&L Assoc.	Kansas City	MO	IDT	610,705	724,713	223,614
150	6/15/90	Lincoln Fed. S&L Assoc.	Mt Carmel	TN	IDT	41,137	49,847	15,982
151	6/15/90	Gill Savings Assoc.	San Antonio	TX	P&A	954,639	1,921,311	1,238,087
152	6/15/90	First FS&LA of Estherville & E	Estherville	IA	P&A	43,003	44,722	9,797
153	6/15/90	Family Fed. S&L Assoc.	Shreveport	LA	IDT	23,689	28,674	15,122
154	6/15/90	Century Fed. Sav. Bank	Trenton	TN	P&A	47,616	64,773	20,750
155	6/15/90	Bexar Savings Assoc.	San Antonio	TX	P&A	783,013	987,644	482,614
156	6/15/90	New Mexico FSA	Albuquerque	NM	P&A	174,381	200,311	48,745
157	6/15/90	Home Fed. S&L Assoc.	Memphis	TN	P&A	151,022	176,086	34,555
158	6/15/90	Plano S&L Assoc., FA	Plano	TX	IDT	253,958	275,797	131,338
159	6/15/90	First S&L Assoc., FA	Waco	TX	P&A	318,224	405,190	137,564
160	6/15/90	Unifirst Bank for Sav., A FS&L	Jackson	MS	P&A	536,956	601,095	121,601
161	6/15/90	First Savings of Laredo, FA	Laredo	TX	Payoff	127,641	160,594	69,587
162	6/15/90	First Federal Savings Bank	Diamondville	WY	Payoff	20,892	20,538	11,326
163	6/15/90	Sentinel FS & LA	Phoenix	AZ	IDT	161,299	160,221	27,486

RESOLUTION TRUST CORPORATION—INSTITUTIONS RESOLVED THROUGH SEPTEMBER 30, 1991—Continued

[In thousands of dollars]

OBS	Date of resolution	Name of institution	City	State	Resolution type [1]	Assets at resolution	Liabilities at resolution	Resolution cost [2]
164	6/19/90	American Security FS & LA	Chicago	IL	P&A	29,452	35,875	5,726
165	6/22/90	Landmark Sav. Bank, FSB	Hot Springs	AR	P&A	111,727	163,684	81,381
166	6/22/90	Unipoint Fed Savings Bank	Trumann	AR	P&A	12,324	29,250	17,637
167	6/22/90	Alpine Savings, A FS&LA	Steamboat Sprin	CO	Payoff	42,539	49,403	10,888
168	6/22/90	Rocky Mountain S&L Assoc.	Woodland Park	CO	P&A	10,075	16,818	6,634
169	6/22/90	First Fed. S&L Assoc.	Summerville	GA	P&A	24,680	30,549	7,180
170	6/22/90	Midwestern Sav. Assoc.	Macomb	IL	P&A	72,390	93,243	25,966
171	6/22/90	Anchor Federal S&L Assoc.	Kansas City	KS	P&A	503,749	564,592	64,519
172	6/22/90	Central S&L Assoc., FA	New Orleans	LA	IDT	45,534	65,813	34,893
173	6/22/90	Cass FS & LA of St. Louis	Florissant	MO	IDT	47,861	58,248	15,123
174	6/22/90	Occidental Nebraska SB, FSB	Omaha	NE	P&A	567,162	628,852	148,119
175	6/22/90	Universal Sav. Assoc.	Houston	TX	IDT	125,164	301,678	222,940
176	6/22/90	First Fed. S&L Assoc.	Americus	GA	P&A	49,038	50,579	10,665
177	6/22/90	Great Southern Fed. S&L Assn	Savannah	GA	P&A	534,217	638,743	183,030
178	6/22/90	Home S&L Assoc., F.A	New Orleans	LA	Payoff	28,645	33,540	18,711
179	6/22/90	Taylorbanc Fed. S&L Assn	Taylor	TX	P&A	91,356	116,849	36,499
180	6/22/90	Citizens S&LA of Springfield	Springfield	IL	P&A	64,613	70,212	4,966
181	6/22/90	Metropolitan Financial FS&LA	Dallas	TX	P&A	645,912	826,991	259,321
182	6/22/90	Denton Federal S&L Assoc	Denton	TX	P&A	153,732	150,051	28,487
183	6/22/90	First Garland Fed. S&L Assn	Garland	TX	P&A	107,884	121,824	22,969
184	6/22/90	Family Federal Savings Assoc	Dallas	OR	P&A	88,800	95,118	9,024
185	6/22/90	First Fed. Sav. Assoc. of York	York	NE	P&A	50,763	54,005	7,604
186	6/22/90	Wilshire FS&LA	Los Angeles	CA	Payoff	66,270	68,667	2,781
187	6/22/90	Equitable FS&LA	Columbus	NE	P&A	60,427	62,362	8,427
188	6/22/90	Peninsula S&LA	South San Franc	CA	IDT	31,816	35,113	772
189	6/22/90	Huntington FS&LA	Huntington Beach	CA	P&A	107,561	109,807	4,464
190	6/22/90	Frontier FSA	Walla Walla	WA	P&A	136,971	133,695	3,402
191	6/28/90	St. Louis County Savings Assoc	Ferguson	MO	P&A	75,033	79,964	3,833
192	6/28/90	Sun Federal Savings Association	Fort Dodge	IA	P&A	19,743	19,586	2,162
193	6/29/90	Centrust Federal Savings Bank	Miami	FL	P&A	6,626,291	6,931,075	1,704,818
194	6/29/90	Marshall FS&LA	Marshall	TX	P&A	52,270	56,443	21,837
195	6/29/90	Republic Bank for Sav., FA	Jackson	MS	IDT	27,802	89,569	65,685
196	6/29/90	Delta Fed. S&L Assoc	Drew	MS	IDT	7,326	11,735	7,497
197	6/29/90	Elysian Fed. Savings Bank	Hoboken	NJ	P&A	104,685	111,481	33,487
198	6/29/90	Rusk Fed. S&L Assoc	Rusk	TX	IDT	24,729	41,625	23,954
199	6/29/90	First Fed. S&LA of Colorado Sp	Colorado Spring	CO	P&A	256,075	338,886	138,049
200	6/29/90	General Savings Assoc	Henderson	TX	P&A	32,746	47,748	18,428
201	6/29/90	Gibraltar Savings, F.A	Simi Valley	CA	P&A	6,428,792	6,327,583	521,619
202	6/29/90	Gibraltar Savings Bank F.S.B	Seattle WA	WA	P&A	1,304,796	1,242,222	106,125
203	6/29/90	Colorado Savings Bank, F.S.B	Sterling	CO	IDT	8,553	10,305	1,775
204	6/29/90	Black Hawk S&L Assoc. F.A	Rock Island	IL	P&A	52,325	53,688	2,211
205	6/29/90	Capital Fed. S&L Assoc	Little Rock	AR	IDT	53,233	69,912	23,441
206	6/29/90	Valley Federal Sav. Assoc	McAllen	TX	P&A	475,707	546,123	209,297
207	6/29/90	Constitution Federal Savings A	Tustin	CA	Payoff	66,989	61,623	1,484
208	7/06/90	United Savings Bank, F.S.B	Windom	MN	IDT	128,015	140,329	31,400
209	7/06/90	First Federal Savings Bank and	Kansas City	MO	IDT	26,590	25,592	3,313
210	7/20/90	United FS&LA	Vidalia	LA	P&A	18,437	18,398	0
211	7/20/90	Sun S&L Assoc	Parker	CO	Payoff	226,583	292,861	156,760
212	8/10/90	Colonial Federal Savings Assoc	Prairie Village	KS	P&A	73,112	91,687	25,381
213	8/10/90	Baldwin County Fed. Sav. Bank	Robertsdale	AL	P&A	140,016	150,245	20,773
214	8/10/90	Citizens of Texas S&L Assoc	Baytown	TX	P&A	53,534	126,076	80,157
215	8/10/90	Permian S&L Assoc	Kermit	TX	Payoff	6,482	8,439	2,371
216	8/10/90	Banc Iowa Fed. Sav. Bank	Cedar Rapids	IA	P&A	115,877	129,019	27,969
217	8/10/90	The Garnett S&L Assoc	Garnett	KS	P&A	13,662	14,265	1,317
218	8/17/90	First Federal Savings Associate	Warner Robins	GA	P&A	141,692	138,602	25,896
219	8/17/90	Miami Savings Bank	Miami	FL	P&A	86,059	125,909	53,745
220	8/17/90	First Fed. S&L Assoc	Baton Rouge	LA	IDT	36,005	54,587	33,943
221	8/17/90	Illinois Savings Bank, FA	Peoria	IL	P&A	32,551	41,476	9,403
222	8/17/90	The Duncan S&L Assoc.	Duncan	OK	P&A	119,521	129,713	32,094
223	8/17/90	Great Plans Savings Assoc., F	Weatherford	OK	P&A	70,135	78,019	18,988
224	8/17/90	Security Fed. S&L Assoc.	Peoria	IL	P&A	142,825	171,619	46,046
225	8/17/90	Texas Western Fed. Savings Ass	Houston	TX	Payoff	50,558	66,317	16,477
226	8/17/90	Provident SA, FA	Casper	WY	P&A	160,462	177,098	21,729
227	8/17/90	Salamanca Federal Savings Assoc	Salamanca	NY	P&A	26,085	26,266	1,8873
228	8/17/90	Westport Federal Savings Bank	Hanford	CA	Payoff	139,509	141,216	19,609
229	8/22/90	Sweetwater FS & LA	Rock Springs	WY	P&A	11,684	11,177	761
230	8/22/90	Fidelity Savings Bank, F.S.B.	Danville	IL	P&A	10,249	11,350	1,672
231	8/24/90	Lakeland Savings Bank, F.S.B.	Detroit Lakes	MN	IDT	73,713	76,931	11,376
232	8/24/90	Westwood S&L Assoc.	Los Angeles	CA	P&A	272,619	444,052	259,467
233	8/24/90	Chillicothe Fed S&L Assn.	Chillicothe	IL	P&A	32,546	37,946	5,948
234	8/24/90	Jefferson S&L Assoc.	Beaumont	TX	IDT	67,605	138,484	76,965
235	8/24/90	Golden Circle SA, FSB	Corsicana	TX	Payoff	12,988	14,532	2,739
236	8/24/90	Heritage Savings Assn, FA	Jerseyville	IL	P&A	19,884	21,778	1,197
237	8/24/90	Investment FS & LA	Woodland Hills	CA	P&A	192,098	205,138	10,435
238	8/31/90	Spring Branch S&L Assoc	Houston	TX	P&A	85,592	168,831	100,402
239	8/31/90	City Savings Assoc.	League City	TX	IDT	12,266	31,175	20,252
240	8/31/90	Western Empire FS & LA	Yorba Linda	CA	IDT	116,851	134,723	24,049
241	8/31/90	Caguas-Central Fed Sav Bank of	Caguas	PR	P&A	1,372,188	1,365,611	119,625
242	9/07/90	The Benj. Franklin FS & LA	Portland	OR	P&A	3,147,575	3,256,389	104,939
243	9/07/90	Gem City FS & LA	Quincy	IL	P&A	193,904	208,700	19,918
244	9/07/90	Firstcentral Federal Savings B	Chartion	IA	P&A	80,435	82,526	7,518
245	9/07/90	Independence Fed S&L Assn.	Bateville	AR	IDT	170,945	376,920	291,369
246	9/07/90	Community Fed S&L Assoc	Tampa	FL	Payoff	6,725	16,703	11,622
247	9/07/90	First City Fed S&L Assoc.	Baton Rouge	LA	P&A	13,546	19,o49	8,654
248	9/07/90	Missouri Sav. Assoc., FA	Clayton	MO	P&A	428,187	472,114	94,640
249	9/07/90	Midland-Buckeye Sav., A FS&LA	Alliance	OH	P&A	153,022	175,316	38,619
250	9/07/90	Fairmont Federal Savings Assoc	Fairmont	MN	P&A	32,109	34,236	3,681
251	9/07/90	Enterprise Federal, F.S.A.	Clearwater	FL	P&A	40,623	42,315	814
252	9/07/90	Home Owners Savings Bank F.S.B	Boston	MA	P&A	2,872,263	3,134,530	805,795
253	9/12/90	American Home S&L Assoc., F.A.	Edmond	OK	P&A	44,587	57,207	19,390
254	9/14/90	City Fed. S&L Assoc.	Birmingham	AL	P&A	427,732	478,689	86,408
255	9/14/90	Equity Fed. Savings Bank	Denver	CO	Payoff	697	2,311	1,584
256	9/14/90	French Market Homestead FSA	Metairie	LA	IDT	165,032	207,760	81,830
257	9/14/90	Meritbanc Savings Assoc.	Houston	TX	c0	181,996	354,133	210,665
258	9/14/90	Suburban Savings Assoc.	San Antonio	TX	P&A	31,870	48,361	21,688
259	9/14.90	Capitol City FSA	Austin	TX	P&A	284,460	379,750	151,206
260	9/14/90	Community Fed Sav. Assoc.	Bridgeport	CT	IDT	27,706	30,685	4,653
261	9/14/90	Sooner Federal Savings Assoc.	Tulsa	OK	P&A	1,076,360	1,101,571	148,698
262	9/14/90	Crest Fed. S&L Association	Kankakee	IL	IDT	112,532	110,633	12,975
263	9/14/90	Williamsburg FS & LA	Salt Lake City	UT	P&A	255,657	270,442	36,537
264	9/14/90	First Network Federal Savings	Los Angeles	CA	Payoff	384,285	383,431	138,702
265	9/21/90	Great American S&LA, FA	Oak Park	IL	P&A	580,046	598,019	71,845
266	9/21/90	First Savings Association, F.A	Bismarck	ND	IDT	79,804	87,762	10,919
267	9/21/90	Heritage Fed. S&L Assoc	Monroe	NC	P&A	170,157	219,926	59,255
268	9/21/90	First Fed. S&LA of Seminole	Seminole	OK	IDT	21,330	26,193	8,631

RESOLUTION TRUST CORPORATION—INSTITUTIONS RESOLVED THROUGH SEPTEMBER 30, 1991—Continued

[In thousands of dollars]

OBS	Date of resolution	Name of institution	City	State	Resolution type [1]	Assets at resolution	Liabilities at resolution	Resolution cost [2]
269	9/21/90	Caprock Fed. S&L Assoc	Lubbock	TX	Payoff	341,497	551,878	298,994
270	9/21/90	Midwest Federal Savings Bank O	Minot	ND	P&A	471,471	571,877	156,586
271	9/21/90	Mercury FS & LA	Huntington Beach	CA	P&A	1,700,748	1,764,835	33,716
272	9/21/90	North Carolina S & LA, F.A	Charlotte	NC	P&A	458,274	468,166	48,275
273	9/28/90	Empire of America FSB	Buffalo	NY	P&A	5,899,018	6,733,888	1,717,897
274	9/28/90	Arlington Hghts Sav Assn, F.A	Arlington Height	IL	P&A	331,422	366,030	21,536
275	9/28/90	Security Federal Savings Assoc	Richmond	VA	P&A	221,882	252,251	41,124
276	9/28/90	Bannerbanc FS & LA	Garland	TX	IDT	33,338	53,549	19,718
277	9/28/90	Delta S&L Assoc., F.A	Kenner	LA	IDT	134,856	166,506	73,121
278	9/28/90	First Fed. S&L Assoc	New Iberia	LA	IDT	43,332	54,291	13,603
279	9/28/90	Central S&L Assoc	Jackson	MS	IDT	26,072	66,207	42,387
280	9/28/90	Metropolitan Fed S&L Assn	Denville	NJ	P&A	141,048	149,086	12,793
282	9/28/90	American S & LA of Brazoria	Lake Jackson	TX	Payoff	162,440	326,916	216,168
282	9/28/90	Savings of Texas Assoc	Jacksonville	TX	Payoff	51,163	93,705	56,568
283	9/28/90	Seasons Federal Savings Bank	Richmond	VA	P&A	143,622	173,409	47,915
284	9/28/90	Yorkridge-Calvert FSA	Pikesville	MD	IDT	467,469	483,698	43,946
285	9/28/90	Merabank Federal Savings Bank	Phoenix	AZ	P&A	3,951,164	4,288,023	1,023,425
286	9/28/90	United Federal Savings, F.A	New Orleans	LA	IDT	46,850	50,644	26,699
287	10/05/90	Midwest Sav. Assn., FA	Minneapolis	MN	IDT	1,966,791	2,450,425	826,253
288	10/05/90	First FS&LA of Central Indiana	Anderson	IN	P&A	143,689	157,473	16,766
289	10/12/90	Golden Triangle S & LA	Bridge City	TX	Payoff	16,341	66,241	50,465
290	10/19/90	Unvalde FS&LA	Uvalde	TX	Payoff	12,694	14,821	4,558
291	10/19/90	Fortune Financial Fed. S&L Ass	Copperas Cove	TX	Payoff	62,055	73,442	27,447
292	10/26/90	Summit First S & LA, FA	Summit	IL	P&A	51,555	49,222	638
293	10/26/90	First State Sav. Bank FSB	Mountain Home	AR	IDT	80,304	99,873	52,727
294	10/26/90	Southmost S&L Assoc	Brownsville	TX	Payoff	80,043	43,881	55,817
295	10/26/90	Southeastern Sav. Assoc	Dayton	TX	Payoff	63,136	116,932	61,978
296	11/02/90	First Standard Federal Savings	Fairmont	WV	P&A	59,266	61,075	8,319
297	11/02/90	Community Federal Savings Bank	East Moline	IL	P&A	67,750	0	8,861
298	11/02/90	First Fed. S&L Assoc	Fayetteville	AR	P&A	83,818	110,051	32,971
299	11/02/90	Central Texas S&L Assoc	Waco	TX	P&A	136,714	200,042	104,047
300	11/02/90	Deep East Texas Sav Assn	Jasper	TX	P&A	39,323	51,873	18,427
301	11/08/90	Western Gulf S&L Assoc	Bay City	TX	IDT	101,923	299,289	211,980
302	11/09/90	Colonial S & LA, F.A	Cape Girardeau	MO	P&A	97,134	112,054	21,497
303	11/09/90	Home Savings, A FS&LA	Joliet	IL	P&A	105,991	124,342	18,025
304	11/09/90	Valley Savings, A FS&LA	Hutchinson	KS	P&A	132,874	182,848	89,208
305	11/09/90	Home F.S.B. of Worcester	Worcester	MA	IDT	211,198	218,538	94,118
306	11/09/90	First Federal Sav. Assoc. of B	Bluefield	WV	P&A	27,716	27,368	5,127
307	11/09/90	Grand Prairie FS & LA	Stuttgart	AR	Payoff	19,794	25,157	5,763
308	11/09/90	Bank USA Savings Association	Silvis	IL	IDT	19,779	19,108	0
309	11/16/90	Pioneer FS & LA	Marietta	OH	Payoff	8,724	6,991	340
310	11/16/90	The Hiawatha Federal Sav. Assoc	Hiawatha	KS	P&A	46,107	55,479	26,093
311	11/16/90	Nassau S & LA	Brooklyn	NY	P&A	215,233	257,944	47,004
312	11/16/90	Whitestone FS & LA	Whitestone	NY	P&A	253,605	284,151	9,306
313	11/16/90	New Athens FS & LA	New Athens	IL	P&A	19,192	21,171	2,947
314	11/16/90	Equitable Fed. Sav. Bank	Fremont	NE	P&A	144,804	167,560	30,910
315	11/16/90	Resource Savings Assoc.	Denison	TX	Payoff	285,729	482,461	278,447
316	11/16/90	Southwest Fed. Savings Assoc	Los Angeles	CA	P&A	491,038	589,829	118,470
317	11/16/90	Fidelity Federal Sav. Assoc	Galesburg	IL	P&A	237,885	284,931	57,897
318	11/16/90	Brookside Federal S&L Assoc	Los Angeles	CA	Payoff	450,062	468,521	62,882
319	11/16/90	Security Federal Savings Bank	Carlsbad	NH	IDT	22,242	31,107	9,705
320	11/29/90	Frontier Federal Savings Bank	Belleville	IL	P&A	31,185	33,956	5,058
321	11/30/90	Heritage FSB of Omaha	Omaha	NE	P&A	138,201	146,862	24,468
322	11/30/90	Madison Guaranty S&L Assn	McCrory	AR	P&A	81,879	119,365	47,655
323	11/30/90	Midwest Home FSB	Belleville	IL	P&A	66,662	82,200	21,550
324	11/30/90	First Louisiana Fed. Sav. Bank	Lafayette	LA	IDT	57,550	86,052	48,622
325	11/30/90	First Sav Assn of Southeast TE	Silsbee	TX	P&A	33,350	44,709	17,816
326	11/30/90	Fidelity Fed. Sav. Assoc	Port Arthur	TX	P&A	170,658	256,539	110,031
327	11/30/90	Sun State S&L Assn., FSA	Phoenix	AZ	IDT	639,680	784,760	397,254
328	11/30/90	Parish Fed. S&L Assoc	Denham Springs	LA	Payoff	10,021	11,368	3,478
329	11/30/90	St. Charles FSA	St. Charles	IL	P&A	67,417	80,794	12,236
330	11/30/90	Hendereson Home S & LA, F.A.	Henderson	KY	P&A	8,997	37,226	3,149
331	11/30/90	First American FSB	Santa Fe	NM	Payoff	90,177	106,376	38,179
332	12/07/90	Commonwealth S&L Assoc	Osceola	AR	P&A	18,495	28,844	13,227
333	12/07/90	First Fed. S&L Assoc	Shreveport	LA	Payoff	141,431	209,388	135,436
334	12/07/90	Terrebonne S&L Assoc, FA	Houma	LA	IDT	14,786	18,926	5,794
335	12/07/90	Security Fed. Savings Assn	Texarkana	TX	Payoff	204,689	590,199	468,228
336	12/07/90	Vision Banc Sav. Assoc	Kingsville	TX	Payoff	41,443	99,765	63,524
337	12/07/90	Karnes County FS & LA	Karnes City	TX	IDT	40,249	53,723	18,937
338	12/07/90	First America Savings Bank, F	Fort Smith	AR	P&A	372,006	366,492	53,370
339	12/07/90	Charter Savings Bank, FSB	Newport Beach	CA	IDT	212,994	229,511	34,433
340	12/07/90	Deposit Trust Federal Savings	Monroe	LA	IDT	52,534	62,539	21,446
341	12/07/90	Haven S & LA, F.A.	Winter Haven	FL	P&A	128,150	151,442	32,616
342	12/13/90	United Savings, FSB	Patterson	NJ	Payoff	188,292	190,798	24,523
343	12/14/90	Frontier SA	Las Vegas	NV	P&A—ARP	254,687	246,951	0
344	12/14/90	Community FS & LA	St. Louis	MO	P&A—ARP	1,999,918	2,294,481	372,071
345	12/14/90	Peoples FSA	Bartlesville	OK	IDT	71,502	74,588	8,341
346	12/14/90	First FSB of Kansas	Wellington	KS	IDT	104,688	158,248	74,859
347	12/14/90	Excel Banc Sav. Assoc	Laredo	TX	Payoff	93,468	125,686	63,788
348	12/14/90	Great American S & LA, F.A.	Corinth	MS	Payoff	78,175	88,897	16,205
349	12/14/90	Mississippi Savings Bank, F.S.	Batesville	MS	Payoff	147,488	147,984	38,893
350	12/14/90	Hometown Savings Bank, FSB	Delphi	IN	P&A	48,394	53,846	8,385
351	12/15/90	Mid-America FS & LA	Columbus	OH	P&A—ARP	960,195	1,010,749	39,148
352	12/27/90	Enterprise Savings Bank, FA	Chicago	IL	P&A—ARP	419,022	469,879	55,000
353	1/04/91	Royal Oak FS & LA	Randallstown	MD	P&A—ARP	27,539	29,266	2,158
354	1/04/91	First FS & LA of Pittsburgh	Pittsburgh	PA	P&A—ARP	2,771,833	2,816,486	191,808
355	1/04/91	Liberty Savings Bank, FSB	Randallstown	MD	IDT	20,173	26,193	14,210
356	1/04/91	Moultrie Savings Bank, FSB	Moultrie	GA	P&A	50,998	52,414	3,766
357	1/04/91	First FS & LA	San Antonio	TX	P&A—ARP	530,461	544,229	60,674
358	1/11/91	City Savings, F.S.B.	Bedminster	NJ	IDT	5,550,581	6,233,465	1,531,213
359	1/11/91	Padre Federal Sav. & Loan	Corpus Christi	TX	Payoff	21,314	35,717	18,839
360	1/11/91	General Federal Savings Bank	Miami	FL	IDT	298,738	307,510	77,785
361	1/18/91	Founders Federal S&L Assn.	Los Angeles	CA	IDT	94,858	144,115	64,313
362	1/18/91	Silver Savings Assoc., FA	Silver City	NM	IDT	27,347	28,690	4,931
363	2/08/91	American Fed. Sav. Assoc. of I	Des Moines	IA	P&A	454,885	491,180	56,695
364	2/15/91	Mid Kansas S&L Assoc. F.A.	Wichita	KS	P&A	369,184	407,569	142,745
365	2/15/91	Security Federal Savings, FSB	Columbia	SC	P&A	438,140	500,984	109,165
366	2/15/91	Pima FS&LA	Tucson	AZ	P&A	1,511,473	1,573,519	319,204
367	3/01/91	Statesman Federal Savings Bank	Waterloo	IA	P&A	410,428	394,762	31,001
368	3/01/91	ABQ Federal Savings Bank	Albuquerque	NM	P&A	846,300	1,161,590	476,429
369	3/01/91	Pioneer Federal Savings Bank	Clearwater	FL	P&A	1,321,823	1,432,458	322,285
370	3/01/91	Sandia Fed. Sav. Assoc.	Albuquerque	NM	P&A	743,562	1,295,701	909,969
371	3/08/91	Horizon Savings Bank, F.S.B.	Wilmette	IL	P&A	527,202	647,407	176,012
372	3/08/91	Lincoln S&L Assoc, FA	Irvine	CA	P&A	2,226,392	4,125,738	2,824,170
373	3/08/91	Commonwealth FS&LA	Fort Lauderdale	FL	P&A	735,040	875,753	324,922

RESOLUTION TRUST CORPORATION—INSTITUTIONS RESOLVED THROUGH SEPTEMBER 30, 1991—Continued

[In thousands of dollars]

OBS	Date of resolution	Name of institution	City	State	Resolution type [1]	Assets at resolution	Liabilities at resolution	Resolution cost [2]
374	3/15/91	Security S&L Assoc.	Scottsdale	AZ	IDT	553,677	1,100,756	844,128
375	4/19/91	Imperial Federal Savings Assoc.	San Diego	CA	P&A	5,873,730	5,871,984	1,647,062
376	5/03/91	First FSB of Annapolis	Annapolis	MD	IDT	559,930	649,300	291,907
377	5/03/91	Alamo FSA of Texas	San Antonio	TX	Payoff	415,481	787,940	564,298
378	5/10/91	Capitol Federal Bank for Savin	Chicago	IL	P&A—ARP	38,103	33,073	0
379	5/10/91	First Bankers & SA, F.A.	Midland	TX	Payoff	64,893	77,668	26,254
380	5/17/91	Palo Duro FS&LA	Amarillo	TX	P&A	41,211	49,836	14,079
381	5/17/91	Red River S&L Assoc.	Coushatta	LA	P&A	3,484	5,116	2,973
382	5/17/91	Time FS & LA	San Francisco	CA	P&A	36,455	38,993	6,246
383	5/22/91	Texas FSA	San Antonio	TX	Payoff	32,181	63,896	47,367
384	5/24/91	Boonslick S & LA	Boonville	MO	P&A	54,890	56,314	4,183
385	5/24/91	Security Homestead FSA	New Orleans	LA	IDT	315,988	397,407	102,559
386	5/30/91	Remington Federal Savings Asso	Elgin	TX	Payoff	67,491	89,214	62,867
387	5/31/91	Heritage FSA	Lancaster	PA	P&A	40,246	41,967	1,277
388	5/31/91	North Texas FSA	Wichita Falls	TX	IDT	65,592	74,879	18,567
389	5/31/91	First FSA of Nacogdoches	Nacogdoches	TX	P&A	51,251	52,581	20,387
390	5/31/91	Hometown FSA	Winfield	IL	P&A	40,685	43,823	10,576
391	5/31/91	Greenwood FS & LA	Greenwood	MS	IDT	11,545	15,719	4,900
392	5/31/91	Sabine Valley S&L Assoc.	Center	TX	Payoff	13,797	22,626	10,123
393	5/31/91	Commercial S&L Assn., FA	Hammond	LA	Payoff	50,141	61,641	36,684
394	5/31/91	Clyde Federal Savings Associat.	North Riverside	IL	P&A	312,526	370,614	71,758
395	5/31/91	Tennessee FSB	Cookeville	TN	P&A	27,719	30,535	9,224
396	5/31/91	Southeastern Federal Savings B	Laurel	MS	IDT	18,878	22,209	9,994
397	6/07/91	American Sa of Mt. Carmel, FA	Mt. Carmel	IL	P&A	6,216	6,935	*1,473
398	6/07/91	First Federal Savings, F.S.A.	New Braunefels	TX	IDT	220,862	205,116	56,607
399	6/07/91	First FS & LA of Wichita Falls	Wichita Falls	TX	Payoff	69,270	77,561	18,053
400	6/07/91	Broken Arrow Savings Assoc., FA	Broken Arrow	OK	P&A	20,682	22,535	5,795
401	6/07/91	North Jersey Federal Savings A	Passaic	NJ	P&A	189,432	297,861	157,248
402	6/07/91	Citizens Homestead FSA	New Orleans	LA	Payoff	73,133	95,432	42,343
403	6/07/91	Surety Federal Sav. Assoc.	El Paso	TX	Payoff	217,717	246,540	104,463
404	6/07/91	Liberty Federal Savings Bank	Huntington Park	CA	P&A	36,658	39,030	5,317
405	6/07/91	Investors Federal Savings Bank	Deerfield Beach	FL	P&A	192,607	225,851	80,893
406	6/07/91	Investor Savings Bank, FSB	Nashville	TN	P&A	40,834	46,280	14,580
407	6/07/91	First FSA of Tuscola	Tuscola	IL	P&A	17,019	17,967	2,613
408	6/07/91	Rancho Bernardo Fed. Savings B	San Diego	CA	P&A	67,945	70,169	14,896
409	6/14/91	Texas Commercial Sa	Sulphur Springs	TX	P&A	24,516	22,368	6,911
410	6/14/91	Atlanta FSA	Atlanta	TX	P&A	78,875	78,742	17,373
411	6/14/91	South S&L Assoc., F.A.	Slidell	LA	IDT	87,732	137,811	103,656
412	6/14/91	Jasper Fed. S&L Assoc.	Jasper	TX	Payoff	89,567	140,040	72,660
413	6/14/91	Southern Federal Savings A	El Paso	TX	Payoff	63,919	104,540	77,230
414	6/14/91	Guaranty Savings Bank, FSB	Fayetteville	NC	P&A	23,816	29,106	11,960
415	6/14/91	First Guaranty FS & LA	Hattiesburg	MS	P&A	123,147	165,147	98,207
416	6/19/91	Financial Savings of Hartford,	Hartford	CT	P&A	14,286	14,763	3,385
417	6/21/91	Ambassor FS & LA	Tamarac	FL	P&A	110,671	126,622	52,488
418	6/21/91	First Federal Savings Assoc.	Las Vegas	NM	P&A	45,231	45,453	13,612
419	6/21/91	Commonwealth Fed Sav Assn	Houston	TX	IDT	803,434	1,970,042	1,433,331
420	6/21/91	Travis FS & LA	San Antonio	TX	P&A	234,269	240,088	63,210
421	6/21/91	Capitol-Union FSA	Baton Rouge	LA	Payoff	181,778	270,270	133,314
422	6/21/91	First FSA of Breaux Bridge	Breaux Bridge	LA	P&A	16,145	17,864	2,334
423	6/21/91	Great Life F.S.A.	Sunrise	FL	P&A	24,019	27,611	7,926
424	6/21/91	Charter Fed. Sav. Assoc.	Stanford	CT	P&A	87,923	97,479	45,164
425	6/26/91	Austin FS&LA	Austin	TX	Payoff	41,263	55,085	28,281
426	6/28/91	Amigo FS&LA	Brownsville	TX	P&A	13,009	15,188	4,875
427	6/28/91	Vermont SA, FA	Timonium	MD	P&A	118,314	165,311	64,378
428	6/28/91	Southeast Texas FSA	Woodville	TX	Payoff	18,663	22,926	7,454
429	6/28/91	First FSA	Borger	TX	P&A	46,553	53,681	16,446
430	6/28/91	Coral S&LA, FA	Coral Springs	FL	P&A	25,127	25,300	5,005
431	6/05/91	Heritage FSB	Richamond	VA	P&A	574,399	586,663	196,041
432	6/05/91	International FS&LA	North Miami Bea	FL	Payoff	46,613	52,053	17,723
433	6/05/91	George Washington FSA	Jonesboro	TN	P&A	12,707	12,156	1,309
434	6/05/91	Vanguard SB, FSB	Vandergrift	PA	P&A	115,420	122,521	33,040
435	6/05/91	Colonial FSA	Roselle Park	NJ	IDT	189,768	245,577	118,949
436	6/12/91	Citizens & Builders FS, FSB	Penscola	FL	P&A	72,607	81,994	33,329
437	6/12/91	Capitol FS&LA	Aurora	CO	P&A	513,369	739,480	340,420
438	6/12/91	Mutal FS&LA	Weatherford	TX	Payoff	75,280	80,131	21,472
439	6/12/91	Commonwealth FSA	New Orleans	LA	IDT	21,238	34,976	18,259
440	6/12/91	Commerce FSA	San Antonio	TX	P&A	337,807	775,172	603,986
441	7/12/91	First South FSA	Port Neches	TX	Payoff	127,451	522,200	456,610
442	7/12/91	Atlantic Permanent FSB	Norfolk	VA	IDT	135,006	177,883	94,218
443	7/12/91	Brookhaven	FS&LA	MS	P&A	22,351	29,017	10,685
444	7/12/91	First Jackson FSB	Jackson	MS	P&A	30,736	47,212	22,439
445	7/12/91	Pacific Coast FSA of America	San Francisco	CA	P&A	659,072	635,256	59,418
446	7/12/91	Windsor FSA	Austin	TX	Payoff	78,959	95,795	45,547
447	7/19/91	Family S&LA, FA	Seattle	WA	P&A	43,160	46,211	5,564
448	7/19/91	First City FSB	Lucedale	MS	P&A	28,207	29,370	10,550
449	7/19/91	Malibu SB, FSB	Malibu	CA	P&A	121,610	125,152	24,895
450	7/19/91	Beach FSB	Huntington Beach	CT	P&A	62,827	62,517	5,229
451	7/19/91	First S&L Company, FA	Massillion	OH	P&A	115,138	121,329	23,294
452	7/19/91	First FSA of Conroe	Conroe	TX	P&A	120,563	141,822	34,669
453	7/19/91	Clinton S&LA	Clinton	OK	P&A—ARP	21,833	21,805	898
454	7/19/91	Superior SB, FSB	Nacogdoches	TX	IDT	48,239	56,349	12,571
455	7/19/91	Liberty County FS&LA	Liberty	TX	P&A	13,022	26,833	15,529
456	7/19/91	Southwest S&LA, FA	Phoenix	AZ	P&A	1,110,848	1,538,051	948,413
457	7/19/91	Certified FSA	Georgetown	TX	Payoff	58,393	103,253	58,015
458	7/19/91	Ensign FSB	New York	NY	P&A	1,081,334	1,318,446	567,502
459	7/26/91	Germaniabank, A FSB	Alton	IL	P&A	383,314	420,553	124,556
460	7/26/91	First SB of Hemphstead, FSB	Hempstead	TX	Payoff	25,848	25,896	2,590
461	7/26/91	Sentry SB, FSB	Hynnis	MA	P&A	555,349	559,554	166,973
462	7/26/91	Fulton FSA	Atlanta	GA	P&A	1,214,843	1,312,845	301,872
463	7/26/91	Westland FS&LA	Rawlins	WY	P&A—ARP	31,699	31,137	4,105
464	7/26/91	Southwest FSA	Dallas	TX	P&A	5,483,427	5,103,317	688,075
465	7/26/91	First SAV of Arkansas, FA	Little Rock	AR	P&A	709,102	1,181,386	863,372
466	7/26/91	First SB of New Orleans, FSB	Metairie	LA	Payoff	58,324	90,020	52,077
467	7/26/91	Charter SB, FSB	Hattiesburg	MS	P&A	25,792	40,764	24,205
468	8/02/91	Mercer FSB	Trenton	NJ	P&A	42,359	47,975	23,505
469	8/02/91	First FSA of Wewoka	Wewoka	OK	P&A	25,312	24,879	5,322
470	8/02/91	Atascosa SA	Jourdanton	TX	Payoff	24,801	28,430	6,867
471	8/02/91	Trident FS&LA, FA	Newark	NJ	P&A	38,224	38,392	8,500
472	8/02/91	Unity FS&LA	Beverly Hills	CA	P&A	356,319	338,739	57,328
473	8/02/91	First Northern Cooperative BAN	Keene	NH	P&A	73,543	84,901	19,592
474	8/02/91	Florida FSB, FSB	St Petersburg	FL	P&A	2,169,243	2,354,018	554,982
475	8/02/91	Jennings FSA	Jennings	LA	IDT	28,049	34,589	12,959
476	8/02/91	Timberland FSA	Nacogdoches	TX	IDT	11,318	22,993	13,881
477	8/02/91	Civic FSB	Portsmouth	OH	P&A	51,537	59,788	19,516
478	8/02/91	People's Homestead SB, FSB	Monroe	LA	IDT	118,130	174,378	98,407

RESOLUTION TRUST CORPORATION—INSTITUTIONS RESOLVED THROUGH SEPTEMBER 30, 1991—Continued

[In thousands of dollars]

OBS	Date of resolution	Name of institution	City	State	Resolution type [1]	Assets at resolution	Liabilities at resolution	Resolution cost [2]
479	8/02/91	Texasbanc FSB	Conroe	TX	IDT	100,543	374,170	308,131
480	8/09/91	First FSA of Waynesboro	Waynesboro	TN	P&A	15,847	16,172	2,075
481	8/09/91	Larchmont FS&LA	Larchmont	NY	P&A—ARP	122,697	122,119	0
482	8/09/91	Hidalgo S&LA	Edinburg	TX	P&A	141,751	143,088	52,369
483	8/09/91	Executive Banc SA, FA	New Braunfels	TX	IDT	9,628	9,778	4,190
484	8/09/91	Peoples FSA	Bay St. Louis	MS	P&A	39,655	39,289	2,358
485	8/09/91	Santa Barbara FS&LA	Santa Barbara	CA	P&A	1,728,348	1,742,696	270,486
486	8/09/91	First FS&LA of Thief River Fal	Thief River Fal	MN	P&A—ARP	54,863	55,338	4,558
487	8/09/91	The Federal Savings Banc, FA	Arlington	TX	Payoff	52,930	82,422	38,684
488	8/09/91	Continental FS&LA, FA	Oklahoma City	OK	P&A	259,967	407,929	232,405
489	8/09/91	Freedom SA, FA	Columbus	OH	P&A	169,316	216,403	49,422
490	8/16/91	Citizens Security Bank, FA	Borger	TX	P&A	18,834	19,686	7,402
491	8/16/91	State FSA	Tulsa	OK	P&A	218,937	278,920	104,389
492	8/16/91	Continental Savings, A FS&LA	Bellaire	TX	P&A	768,733	714,976	677,726
493	8/16/91	Duval FSA	Jacksonville	FL	IDT	303,320	426,044	155,242
494	8/16/91	Nowlin FSA	North Richland	TX	P&A	106,803	147,622	65,850
495	8/16/91	Mutual Aide S&LA	Manasquan	NJ	P&A	56,644	62,646	25,539
496	8/16/91	Great West, A FSB	Craig	CO	P&A	23,595	25,888	6,784
497	8/16/91	Jonesboro FSA	Jonesboro	LA	Payoff	25,879	35,457	21,655
498	8/16/91	Southern FSB	Gulfport	MS	P&A	59,887	78,371	35,596
499	8/23/91	First FS&LA	Mt Vernon	OH	P&A—ARP	68,754	69,553	4,680
500	8/23/91	Gold Coast FSB	Plantation	FL	IDT	96,173	108,126	49,279
501	8/23/91	Progressive SB, FSB	Natchitoches	LA	Payoff	7,447	21,254	17,179
502	8/23/91	Old Borough FS&LA	Trenton	NJ	IDT	81,482	85,630	19,715
503	8/23/91	Nassau FS&LA	Princeton	NJ	P&A	142,516	159,713	68,046
504	8/23/91	First Southwest FS&LA	Tyler	TX	P&A	27,405	30,000	7,221
505	8/23/91	Merchants and Mechanics FS&LA	Springfiled	OH	P&A—ARP	202,595	213,894	28,518
506	8/23/91	Heritage FSA	Lamar	CO	P&A	31,476	34,150	12,642
507	8/26/91	Standard FSA	Houston	TX	Payoff	9,953	13,988	6,643
508	8/30/91	Future FSB	Louisville	KY	P&A—ARP	390,138	403,579	45,924
509	8/30/91	Edison FSA	New York	NY	P&A	119,293	119,427	11,110
510	8/30/91	Columbia Fed. Homestead Assoc.	Metairie	LA	IDT	53,343	67,948	30,924
511	8/30/91	Texarkana FS&LA, FA	Texarkana	AR	P&A	31,968	31,898	13,757
512	9/04/91	City S&LA	San Antonio	TX	Payoff	116,575	124,549	40,882
513	9/06/91	Desoto FS&LA	Mansfield	LA	Payoff	39,717	42,903	9,662
514	9/06/91	First FS&LA	Temple	TX	P&A	248,924	280,028	55,166
515	9/06/91	United Home Federal	Toledo	OH	P&A—ARP	427,339	438,962	24,754
516	9/06/91	Peoples FSB	New Kensington	PA	P&A	85,256	85,457	6,419
517	9/06/91	First FSA	Winnfield	LA	Payoff	31,341	33,360	8,265
518	9/06/91	Andrews S&LA, FA	Andrews	TX	IDT	59,009	60,139	10,489
519	9/06/91	Benjamin Franklin FSA	Houston	TX	P&A	693,198	1,440,982	975,652
520	9/06/91	Heartland S&LA	La Mesa	CA	P&A—ARP	121,400	120,356	14,974
521	9/06/91	Arkansas FSB, FA	Little Rock	AR	P&A	35,596	36,767	19,444
522	9/06/91	United S&L of Trenton, F.A.	Trenton	NJ	P&A	148,658	170,396	53,233
523	9/13/91	First Jersey Savings, FA	Wyckoff	NJ	P&A	226,563	232,325	45,626
524	9/13/91	Comfed SB, FA	Lowell	MA	P&A	839,589	930,751	386,061
525	9/13/91	Alexander Hamilton FS&LA	Paterson	NJ	P&A	182,632	181,174	20,187
526	9/13/91	First FSB	Huron	SD	P&A	41,643	39,734	6,158
527	9/13/91	Columbia S&LA, FA	Beverly Hills	CA	IDT	4,252,897	4,327,261	1,149,473
528	9/13/91	Sovereign SB, FSB	Palm Harbor	FL	P&A	22,572	23,571	4,063
529	9/13/91	First SA, FA	Paragould	AR	P&A	47,001	48,232	21,706
530	9/13/91	Home FSB, FA	Waukegan	IL	P&A	135,615	137,271	34,424
531	9/13/91	Columbia, FS&LA	Webster	TX	Payoff	36,047	58,658	32,296
532	9/13/91	American FSB	Sanford	ME	IDT	22,026	30,470	13,957
533	9/13/91	Louisiana SA	Lake Charles	LA	IDT	244,027	316,509	134,987
534	9/13/91	First Atlantic FSA	Plainfield	NJ	P&A	556,094	722,690	246,835
535	9/13/91	Louisiana SB, FSB	Kenner	LA	Payoff	26,628	32,608	9,315
536	9/13/91	First America FSB	Longmont	CO	IDT	34,234	65,023	65,470
537	9/20/91	Arcanum FSA	Arcanum	OH	P&A	36,696	38,471	3,727
538	9/20/91	Center S&LA, FA	Clifton	NJ	P&A	102,045	106,701	22,098
539	9/20/91	United FSB	Vienna	VA	P&A	283,482	339,942	111,621
540	9/20/91	Amerifederal SB, FSB	Lawrenceville	NJ	IDT	77,064	79,928	29,390
541	9/20/91	Southeastern FSB	Charlotte	NC	P&A	210,397	218,253	85,304
542	9/20/91	Yorkville FS&LA	Bronx	NY	P&A	283,345	285,325	79,893
543	9/20/91	Savers SA, A FS&LA	Little Rock	AR	P&A	373,977	852,754	638,515
544	9/20/91	Bancplus FSA	Pasadena	TX	P&A	325,577	896,918	702,239
545	9/20/91	Bayshore FSA	La Porte	TX	P&A	19,110	44,351	27,939
546	9/20/91	First Citizens SLA, FA	Fort Pierce	FL	P&A	149,157	167,778	45,855
547	9/20/91	American Pioneer FSB	Orlando	FL	P&A	880,889	1,189,838	538,034
548	9/20/91	El Paso FSA	El Paso	TX	Payoff	244,913	330,091	179,452
549	9/27/91	Santa Paula S&LA	Santa Paula	CA	P&A—ARP	258,465	257,390	35,589
550	9/27/91	Southern FS	New Orleans	LA	P&A	192,076	191,342	39,055
551	9/27/91	Superior FSA	Cleveland	OH	P&A	49,234	51,833	21,869
552	9/27/91	Home FS&LA of Harlan	Harlan	IA	P&A—ARP	88,815	87,288	12,479
553	9/27/91	Eastern FS&LA of Sayville	Sayville	NY	P&A—ARP	258,872	263,425	36,246
554	9/27/91	Mainstay FS, FSB	Red Bank	NJ	P&A	160,077	158,883	54,542
555	9/27/91	San Jacinto SA, FA	Bellaire	TX	P&A	2,228,358	2,873,029	1,423,801
556	9/27/91	First FS&LA	Dallas	GA	P&A	27,589	28,709	3,411
557	9/27/91	Preferred SB, FSB	High Point	NC	P&A	147,035	145,938	34,352
558	9/27/91	First FS&LA of Toledo	Toledo	OH	P&A	847,852	810,407	128,329
559	9/27/91	Gold River SB	Fair Oaks	CA	P&A—ARP	20,013	20,244	2,893
560	9/27/91	First FS&LA of Andalusia, FA	Andalusia	AL	P&A	27,893	30,927	6,698
561	9/27/91	United Savings of America	Chicago	IL	P&A—ARP	1,027,004	1,105,215	118,427
562	9/27/91	Nutley S&LA	Nutley	NJ	P&A—ARP	187,785	191,606	25,489
563	9/27/91	First FS&LA	Beaumont	TX	P&A—ARP	257,355	252,460	21,581
68,106,738						176,404,651	208,533,649	

[1] IDT=insured deposit transfer, P&A=purchase and assumption; Payoff=depositor payout, P&A—ARP=accelerated resolutions program.
[2] Estimated cost of resolution at time of resolution.

NOTES TO TABLE

The table provides for each of the 563 institutions resolved by RTC from its inception through September 30, 1991:

(1) the name of the institution resolved,
(2) the location of the institution,
(3) the type of resolution,
(4) total assets booked at resolution,
(5) total liabilities booked at resolution, and
(6) the total cost (loss) estimate booked at resolution.

RTC's year-end 1989 audited financial statements accounted for estimated losses of approximately $44 billion for institutions that were closed in 1989 and those that were to be closed in 1990. However, cost estimates booked for each institution at the time of each resolution during 1990 were lower than the aggregate estimates carried in the 1989 statements. The asset valuation process conducted early in 1991 in order to prepare year-end 1990 statements indicated that loss estimates should be increased from those booked at the time of resolution by approximately $6.4 billion—back up to about the same level originally included in the 1989 statements for the same set of institutions. The $6.4 billion adjustment accounts for the difference between the $68.11 billion total estimate of

costs through September 1991 booked at the time of each resolution (shown in the attached table) and the current estimate of $74.55 billion in total costs incurred for cases resolved through September (shown in the September 1991 RTC Review).

About 75 percent of the $6.4 billion revision reflected a one-time adjustment to correct an underestimate of operating losses in failed thrifts through the time of resolution and to reserve adequately for all future expenses associated with liquidating thrifts asset portfolios. Procedures were then put in place to make sure that cost estimates made at the time of each subsequent new resolution accounted for these factors in order to lessen the possibility of future large increases in estimates.

The remaining 25 percent of the $6.4 billion adjustment was due to a revision of asset values stemming from a reassessment of economic and real estate market factors. Since these factors are uncontrollable and uncertain, it is always possible that RTC in the future might have to revise its loss estimates for institutions resolved (and for those yet to be resolved) as part of its recurring asset valuation process.

The asset valuation process conducted to prepare June 1991 RTC financial statements indicated no reason to raise loss estimates at mid-year. RTC is currently conducting its third quarter 1991 review of assets in resolved thrifts.

Also attached is a table included in former FDIC/RTC Chairman Seidman's testimony to the Financial Institutions Subcommittee of the House Banking Committee on September 12, 1991. It provides estimates of total losses that vary according to the size of the caseload ultimately transferred to the RTC. The estimate of $160 billion in total loss funds required ($80 billion currently authorized plus $80 billion in new funds) accounts for the possibility that a substantial number of troubled thrifts currently included in the office of Thrift Supervision's Group III categories will eventually be transferred to the RTC and require taxpayer funds to protect the depositors in those institutions.

Mr. CONRAD. Mr. President, the listing that I have acquired lists the loss that the Government will incur for each S&L that has been resolved since the passage of FIRREA. For the 563 S&L's that have been resolved through the end of September, the taxpayers will lose $74.5 billion. This does not include the expected loss for the roughly 100 institutions now in conservatorship or the losses on another 350 or more institutions now expected to be taken over by the Government. Inclusion of estimated losses on these additional institutions accounts for the additional taxpayer funds that we are being asked to approve in this bill.

The institution by institution listing I am submitting casts some daylight on what has to most people been a rather dark process. However, what is seen in this daylight is not a pretty picture.

What you see in case after case where the current bailout process has turned 10 or 15 percent on depositors' funds into a 35- or 40-percent loss to the taxpayer, or more. That additional loss is occurring because we are simply throwing more bad money after bad money. The RTC openly admits that it will lose 40 cents on the dollar for all of the remaining assets it must sell.

Let me give you a few examples from the list:

The first big institution taken over by the RTC, on October 13, 1989, was University Federal Savings in Houston. At the time of resolution, there were $4.4 billion of deposits and other liabilities versus over $3.7 billion assets, for a difference of nearly $700 million. The RTC says it will spend $2.5 billion of taxpayer funds to clean up University Federal.

Peoples Heritage Savings & Loan in Kansas, a $1.5 billion institution with a shortfall at resolution of $70 million, will take nearly $1 billion of tax funds to clean up.

Western S&L in Phoenix, a $4.5 billion institution at resolution with a shortfall of $440 million, will take $1.7 billion of tax funds to clean up.

In the biggest takeover to date, CenTrust in Miami was a $6.9 billion institution at resolution with a difference between assets and liabilities of $300 million, but now the RTC will spend at least $1.7 billion of tax money to clean it up.

Imperial Federal Savings Association of San Diego was resolved in April of this year. Its liabilities matched its assets of $5.8 billion, but the taxpayers will be asked by the RTC to dole out over $1.6 billion to clean it up.

These are the bottomline numbers. Add it all up and the RTC is planning to spend over $74 billion on the resolutions to date, with losses on hundreds more institutions to be added in the months ahead.

It is a sorry mess; 58 percent of these institutions went under at the hands of criminals while the administration slept.

Now we are throwing bad money after bad. If you look at the headlines and look at the audit reports, the handling of the cleanup has been a mess. Report after report of insider information, sweetheart deals, conflicts of interest, padded bills, this cleanup has been a mess.

I thank the Chair.

Mr. RIEGLE. Mr. President, let me ask unanimous consent that a colloquy be entered in the RECORD which I will have with Senator METZENBAUM at the appropriate point in the debate on the banking reform bill. After we have concluded the voting process, we will actually engage in that colloquy on the floor.

Mr. SEYMOUR. Mr. President, I object.

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

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. GARN. I yield 1 minute to the Senator from California.

Mr. SEYMOUR. Mr. President, I rose to object to the unanimous consent, and apparently the President did not hear me.

The PRESIDING OFFICER. The unanimous consent was to include material.

Mr. SEYMOUR. I am well aware of that, Mr. President.

The PRESIDING OFFICER. There was an objection, and I will rescind the unanimous-consent request.

Mr. SEYMOUR. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, if there are no further requests for time at this time, there is essential legislation that must be passed, and I am going to move in a moment to yield back our time so the vote can occur.

Mr. KASTEN. If the chairman will yield, I would like to speak very briefly in opposition to the legislation. I do not know; I assume both Senators are in favor of the legislation. Will either of them yield to me 1 minute?

The PRESIDING OFFICER. Who yields time?

Mr. GARN. I yield 1 minute to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, once again we are being asked to give the RTC an additional $25 billion in taxpayer money for the S&L cleanup. In March 1991, the Senate voted to give the RTC $30 billion to do the same, and during consideration of FIRREA the Senate appropriated $50 billion for the S&L cleanup.

After the last debate on this issue, the administration told Congress that the total cleanup cost will total $175 billion over 30 years. Well, in 3 short years we will have spent over $125 billion for the cleanup. We still have 27 years to go and no end in sight. Therefore I cannot support this latest cash infusion to this losing proposition.

This multibillion dollar S&L bailout bill represents a massive wealth transfer from States with well-managed S&L's like Wisconsin to States with high flying and often fraudulent S&L speculators like Texas and California.

This is patently unfair. Wisconsin should pay their fair share for the cost of the cleanup because we all benefit from the Federal deposit insurance. But this outrageous mess is not Wisconsin's fault because our S&L's are well managed and conservatively run.

I recognize the importance of funding the RTC, but I cannot in good conscience support this measure unless we do something to raise real estate values and strengthen our financial institutions. This appropriation of $25 billion is a waste of taxpayer dollars.

The value of an asset is determined by the income you can expect to earn from it when you sell it. The higher the capital gains tax, the lower the expected future income, and hence the lower the value of the asset.

Because of the high capital gains tax and the elimination of passive loss incentives for real estate, the Government—through the RTC—has inherited a portfolio of devalued property.

Declining real estate prices have pushed more S&L's—and community banks—into insolvency.

The capital gains tax cut and restoration of passive loss incentives for real estate investors in the Kasten-Weber growth package would allow the RTC to sell its portfolio of real estate assets at higher prices.

The less the Government has to pay to hold on to these assets, the more revenue we get from them, and the less taxpayers will have to pay.

Periodic cash infusions from Congress will add to the ultimate costs of resolving the S&L debacle. In 1989, we were assured during consideration of FIRREA that only $50 billion would be needed to cleanup this mess. Yet here we are, adding another $25 billion, and I can confidently predict that cost will grow.

Before we commit one more dime of taxpayer money to the S&L bailout, we ought to do something to raise real estate values.

According to former Treasury economist Gary Robbins, a 15 percent indexed capital gains tax would lower the cost of the S&L bailout by $23.2 billion.

Let me repeat: American taxpayers would save $23.2 billion.

We need to address the underlying disease of falling real estate values. Economist Paul Craig Roberts points out that "Bankers forced to write down their real estate loans and to establish reserves against them aren't anxious to lend anyone."

This is a major contributing factor to the current credit crunch, which is hurting small businesses. My proposal—the Kasten-Weber tax incentive plan—says that we ought to take direct action to stem further bailout losses, and to encourage lending.

Handing the RTC a check for $25 billion will not help solve the problem. Strengthening the U.S. Tax Code to enhance real estate values through a capital gains tax cut will. Therefore, I vote no for policy rooted in the past. Let us move forward and enact pro-growth legislation so that we can get this debacle behind us.

SEVERAL SENATORS addressed the Chair.

Mr. RIEGLE. I yield 1 minute to the Senator from Ohio.

Mr. METZENBAUM. Mr. President, given the fact there was objection to the colloquy by the Senator from California, I guess I will have to go through it orally and tie up the Senate a little bit, and I am sorry to do that.

Last weekend, I asked the Senator from Michigan—the Senate passed legislation authorizing the bank insurance fund to borrow up to $70 billion from the Federal Government, $45 billion of which would require the backing of assets required in the process of resulting failed banks.

I expressed my concern about where the money would come from to be made, that working capital debt, if the assets backing eventually sold are less than the amount borrowed.

I offered language which the managers of the bill were kind enough to include in an amendment to the bill that requires any such shortfall be covered by assessments on banks.

Is that language included in the conference report?

Mr. RIEGLE. Mr. President, let me say to the Senator from Ohio that precise language is not in the report because it was concluded by the conferees that the language in the bill already provided the same taxpayer protection and bank liability.

Mr. METZENBAUM. Does that mean taxpayers will be liable for proceeds from sales if assets by the bank insurance fund do not meet expectations?

Mr. RIEGLE. No, it does not. The bill reported by the conferees provides all possible protections, that the borrowing it authorizes is fully intended and required to be repaid by the industry and not the taxpayer. The bill requires that once the bank insurance fund starts borrowing from the Treasury to cover losses, the FDIC must set, and when necessary revise, a schedule of future assessment rates on banks sufficient to repay these borrowings and rebuild the net balance of the bank insurance fund to its target level of 1.25 percent of insured deposits within a 15-year period.

If assets are sold for less than their expected value, the bank insurance fund must recognize a loss. That loss would place the fund deeper in the hole and force assessment rates up in order to maintain the scheduled rebuilding of the fund within the 15-year deadline.

So indirectly, but inevitably, any loss on asset sales will be made up and must be made up by higher assessment rates on the banks themselves, and not upon taxpayers.

Mr. METZENBAUM. I thank the Senator from Michigan. I have been concerned, as he knows, about the taxpayers being forced to pay any of the $70 billion. With that assurance, I have no further questions.

Mr. RIEGLE. I thank the Senator.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. I wonder, what is the parliamentary situation on time?

The PRESIDING OFFICER. The Senator from Michigan has 2 minutes 20 seconds; the Senator from Utah has 1 minute 48 seconds.

Mr. BUMPERS. Mr. President, additional parliamentary inquiry. Is this bill susceptible to being divided through a division?

The PRESIDING OFFICER. There is no precedent for dividing the bill in the Senate.

Mr. BUMPERS. Will the Senator from Michigan yield 1 minute?

Mr. RIEGLE. Yes. I yield 1 minute to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I fully intended to vote against the bill as it left the Senate. I am troubled by this: Even though it is obviously based on—what my staffer can glean from it—it seems to be infinitely preferable to what we passed out of here.

I am just looking here, title I of this bill has 142 pages; title XII has 1,567 pages; title III has 79 pages; and then the next title is about something like 60 pages, also.

Mr. SARBANES. Would the Senator yield?

Mr. BUMPERS. I would be happy to. I have 1 minute left.

Mr. SARBANES. It is a long bill.

Mr. BUMPERS. It is a long bill.

I invite everybody in the Senate who has looked through this very carefully and knows what is in it and is satisfied with it, to vote "aye.

If you do not, if you have not read it, then what I would really like to have done is—the reason I asked about the division, Mr. President, was I do not mind voting for the FDIC recapitalization, and most of the items I was most concerned about had been taken out.

Mr. RIEGLE. Mr. President, I say to the Senator, I do know what is in every page of that bill because we were working on it until 5 a.m. this morning, as was the Senator [Mr. SARBANES]. This bill has been constructed with great care.

The essence of the bill is to provide the loans to the deposit insurance fund, but there are a whole series of new bank regulatory standards and safeguards that are much stronger than what have been in place in the past, which we think are going to stop the pattern of abuses and allow us to go in and shut down failing banks before they finally exhaust their capital and become a charge against the fund. We move against abuse by foreign banks, as we saw in the BCCI case.

It is long, but the law in the area of banking regulation is very complex. In order to do it in sufficient detail, it requires a bill of this size. As the Senator knows, many of the bills we have here are lengthy because of the nature and complexity of the law in that area.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator for Utah has 1 minute, 40 seconds.

Mr. GARN. Mr. President, I simply say to my colleague, if he reads the bill, he would want to vote for it, because he would not want to vote for $70 billion unless we put the safety and soundness features in it. All of the extraneous provisions in the Senate bill on powers are all gone. I would not vote, as he said, for just title I, without giving the regulators some powers to make sure that that $70 billion is paid

back by the banks and not by the taxpayers.

So I suggest that he do read it, and I tell my colleagues that if they read it, it would make them much more comfortable in voting for the bill.

Mr. BUMPERS. Have any changes been made in this bill on the rights of banks in the selling of insurance?

Mr. GARN. They were tightened—unfortunately, for this Senator's standpoint. They were tightened. I would have preferred that they not be. Any changes in insurance are tightened. The Senator from Connecticut can verify that.

I yield the remainder of my time.

RESOLUTION TRUST CORPORATION FUNDING

Mr. WIRTH. Mr. President, I cannot support the Resolution Trust Corporation [RTC] funding package that is now before the Senate. The RTC needs additional resources to do its job and close insolvent thrifts. Delay will only increase the eventual costs of resolving S&L failures.

But inefficiency increases those costs as well. The RTC has not won praise for its efficiency. I believe the structure of the RTC is too cumbersome and has contributed to the Corporation's problems thus far. I cannot support additional RTC funding unless the legislation includes meaningful reforms to ensure the new resources are efficiently spent.

I have been concerned with the structure and operations of the RTC since its inception and introduced legislation to revamp its structure during the last Congress and again earlier this year. This legislation, the Savings and Loan Simplification Act or SALSA, would consolidate the Oversight Board's policy guidance role and the RTC Board's responsibility for day-to-day operations. I believe this structural change would be more efficient and lead to swifter decisionmaking and implementation at the RTC.

Support for RTC restructuring has grown since I first put forward that proposal and the administration, after months of resistance, recently offered its own modest plan to reform the RTC. A consensus developed that some type of RTC restructuring is necessary and the question before us became not whether to restructure the Corporation but how to do it.

At a recent Banking Committee hearing, several experts supported an RTC restructuring proposal I developed with Senator KERREY of Nebraska to revamp the RTC's dual board structure. That proposal would abolish the Oversight Board and create one Board for the RTC. The President would appoint a Chief Executive Officer for the Corporation who would also chair the Board. The Secretary of the Treasury, Chair of the FDIC, and two independent members named by the President would also serve on the Board. The witnesses indicated that plan was the best of the various proposals outlined at the hearing and was a quantum improvement over the present RTC structure.

After that hearing, Senator RIEGLE introduced legislation (S. 1943) that included an RTC restructuring plan that largely tracks the Wirth-Kerrey proposal. I was an original cosponsor of that legislation which reflected the consensus that those of us pursuing the issue developed as we held hearings on the RTC and examined its structure and operations.

Unfortunately, the package before us today does not include this proposal. It includes some elements of S. 1943, such as prohibiting the RTC from paying off uninsured depositors or creditors, strengthening the affordable housing program, and disclosure of the highest salaries at the RTC. However, it does not include the restructuring reforms that are the heart of the consensus legislation developed in recent months.

I cannot support the RTC restructuring proposal that is included in the legislation before us today. I do not believe it represents meaningful and effective reform. While the proposal purports to eliminate the dual board structure, as a practical matter, I think it will do little to improve the RTC's operations.

The package eliminates the RTC Board while retaining a restructured Oversight Board. The new Board generally retains the present Oversight Board members while making some marginal improvements such as replacing the Secretary of Housing and Urban Development with the Director of the Office of Thrift Supervision.

The legislation does make some changes to the RTC's operating structure by getting rid of the RTC Board and establishing a CEO to run the RTC. However, under current law, the Oversight Board could appoint a CEO to run the day-to-day operations, and could remove the FDIC as exclusive manager of the RTC and the FDIC Board from its role as the RTC Board. New legislation is not needed to do this and Albert Casey is already on board directing the RTC's day-to-day activities.

In many ways, the reform included in this package is just a reshuffling of the deck chairs. The new structure would retain the split between the oversight functions and the day-to-day operations that we see in the dual board structure. We still would have a very muddled line of responsibility at the RTC where it is unclear just who is running the Corporation. Maybe that's what the administration wants. But I do not think that's the way it should be.

The new Board would still include the Secretary of the Treasury and the Chairman of the Federal Reserve Board. The Secretary would serve as Chairman of the new Board. Both these individuals have a wide range of responsibilities not related to the S&L industry and have little time to devote to the RTC. Nevertheless, they are on the Oversight Board and consequently their offices do monitor the RTC and form an additional layer of bureaucracy that the RTC must contend with.

I recognize the administration's desire to have input into the RTC's activities and a presence in the RTC leadership. But we can do that without having to put some of the busiest people in the Government on the Board. Four of the seven members of the new Board will have other full-time Government positions and are unlikely to spend a great deal of time overseeing the RTC.

If we are going to simply reshuffle the deck chairs without changing the basic RTC structure, why bother making a change at all? There have been fewer reports of disorder at the RTC recently and there is no question the Corporation has improved its operations. If the change is just cosmetic and unlikely to improve efficiency, why risk any disruption to the progress the RTC has made?

I believe the administration does not really want to change the RTC's structure but is supporting this plan in order to deter a more substantive restructuring. While, I do think we need RTC reform, I would perfer the status quo to a change that is only being for the sake of making a change.

The S&L debacle is arguably the largest financial crisis since the Great Depression. Losses are mounting at a rate of several million dollars a day and resolving the S&L crisis will be among the most expensive undertakings in U.S. history. We have to provide the resources needed to resolve thrift failures and clean up this problem. But we have a responsiility to clean it up at the lowest possible cost to the American taxpayer. The RTC will do much of the job. If it does not operate efficiently the costs of the S&L rescue could climb higher.

Unfortunately, I do not think the RTC is operating as efficiently as possible and I think its cumbersome structure contributes to its problems. That's why I have sought to reform the RTC. This legislation does not include the structural changes that I believe must be part of any meaningful reform package.

I also have serious reservations about the funding portion of the package. We should give the RTC a specific sum that is expected to fund their activities for a period of time. Instead, the package includes what can be described as an "interim blank check" approach. Rather than do what we should do, we have merged the two alternatives to the one year funding the administration requested.

The result is an approach that just might be worse than any of the three

other options. We only provide resources until April, requiring that further legislation be enacted. Given the difficulty and delays that have accompanied RTC funding in the past, there is a chance that the RTC could run out of funds for a while in April under this package. Beyond a doubt, RTC officials will have good reason to be uncertain about their funding.

Right now, similar uncertainty has forced the Corporation to adjust its plans. If we pass the current package that limits the duration of spending authority but not its level, we will give the RTC a perverse incentive to move as quickly as possible during this window to reduce the need for future funding requests and the uncertainty of our prompt response. The RTC will be inclined to expend resources up front while they have funding even if that is not the most efficient way to operate. That can only increase the ultimate cost of resolving the S&L crisis.

Another concern is that, if we enact this funding mechanism today, we probably will see it again. It is easy to imagine us not being prepared to approve funding when the authority expires and instead put the RTC on a diet of short term blank check funding measures while we debate the full package. Each fall, we pass continuing resolutions to keep the government operating while we complete work on appropriations legislation. We may wind up doing the same thing for the RTC in April, keeping the incentive in place for the RTC to accelerate spending regardless of the long-term costs.

Mr. ADAMS. Mr. President, today, Congress is once again authorizing the expenditure of billions of dollars for the Resolution Trust Corporation [RTC]; $25 billion to be exact.

Earlier this year, the Senate debated and passed legislation which provided $30 billion for the RTC. I opposed that bill because it failed to include any controls over the RTC to ensure that it wisely spent taxpayers dollars.

The savings and loan crisis occurred because of the failure to exercise sufficient oversight and control over the industry a decade ago. Throughout the early 1980's, reform and regulation were not practiced by the Reagan administration. Though I did not return to Congress until 1987, I saw from the sidelines how rampant and unchecked deregulation overran anything and everything in its path. It is tragically ironic that the same logic—deregulation and lax oversight—that brought us the savings and loan debacle is now being used by some to argue for more taxpayers' dollars for the RTC.

The best way to ensure that the RTC becomes part of the solution, instead of part of the problem, is to learn from the mistakes of the 1980's and start exercising even greater oversight and reform of the RTC.

In recent months, hearings have been held and suggestions made to correct these problems. But the bill before us does too little, too late to reform the RTC.

American taxpayers, who are footing the bill for the savings and loan cleanup, have so far failed to get a good return on the money invested in the RTC. They deserve better. They deserve strong oversight over how their money is spent.

We all have a responsibility to ensure that hard-earned taxpayer's dollars are not wasted by simply throwing good money after bad at the savings and loan crisis.

I will vote against this legislation and urge my colleagues to do the same.

Mr. LEVIN. Mr. President, I will vote for this legislation with reservations and distress. I am distressed by the amount of taxpayer money needed to shore up the bank insurance fund, and I am distressed by the fact that the Congress has no option but to recapitalize the insurance fund.

This is not a bailout for bankers. If it was, I would not support it. It is, rather, legislation necessary to guarantee that the promises that have been made to individual Americans by the U.S. Government will be kept. American workers and families have been promised that when they deposit their money in a Government insured bank, their deposits will be protected and guaranteed, even if that bank fails. If a bank fails—through no fault of the depositors or the customers—the Government promise is to make good on those funds.

This is a sound and appropriate guarantee, and it has served our Nation well for three generations. But now the insurance fund that backs this promise is out of money because of the distressingly large number of banks that have failed in recent years.

Further, this legislation will enable more oversight of banks by regulators, and new authority for them to seize ailing institutions before they become completely insolvent, costing the taxpayers even more. Ailing banks needs to be closed earlier, and more responsible oversight is needed. This bill does that.

In addition, title I retains an amendment I authored that requires regulators to eliminate excessive compensation by bank and S&L insiders. My amendment will give bank examiners clear direction to use the full range of enforcement tools to halt excessive compensation and set standards prohibiting this unsafe and unsound practice of federally insured banks and S&Ls.

For these reasons, I will vote for this legislation.

Mr. DODD. Mr. President, first of all, I want to commend the chairman of the Banking Committee, Mr. RIEGLE, and the ranking minority member, Mr. GARN, for their prodigious efforts on this legislation. It is worthy of note that this bill was produced at the same time as a 15-hour conference on the banking bill was under way, and I applaud them for their hard work.

In particular, I want to commend the chairman and the ranking minority member for the structural reforms contained in this bill. These important reforms should increase the efficiency of the RTC operations.

However, while I commend the authors of this legislation for their hard work, I will not be able to vote for this bill. Allow me to explain.

Unlike the banking bill we passed earlier today, this bill was never considered by the Senate Banking Committee. Nor did we have time to examine the details of the House bill before voting on it. I cannot in good conscience vote for a bill that provides $25 billion of taxpayer money without having had the opportunity to examine the bill closely.

Second, the bill contains some amendments that were laid aside during the conference on the banking bill only last night. These amendments were carefully considered and rejected, Mr. President, because they were not based on sound banking policy. The take it or leave it nature of the House-passed legislation did not leave the Senate adequate time to remove these amendments, much less debate them.

Finally, the bill does not contain any provisions to control the extraordinary overhead costs of the RTC, particularly with respect to attorneys fees. In my view, that is a glaring omission.

Mr. President, every place I have traveled in the State of Connecticut over the last year, I have heard numerous complaints about the inefficient operations of the RTC. While the legislation before us makes some improvements, the hasty nature of this process has denied the Senate the opportunity to assure the American taxpayers that these problems will be resolved.

Accordingly, Mr. President, I will vote against this bill.

Mr. GRAHAM. Mr. President, have the yeas and nays been ordered on the second bill, the RTC refinancing bill?

The PRESIDING OFFICER. They have not.

Mr. GRAHAM. I request the yeas and nays on the RTC refinancing bill.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report on S. 543, the banking bill.

The yeas and nays are ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Iowa [Mr. HARKIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Nebraska [Mr.

KERREY], the Senator from Wisconsin [Mr. KOHL], the Senator from Arizona [Mr. PRYOR], the Senator from Illinois [Mr. SIMON], and the Senator from Colorado [Mr. WIRTH] and necessarily absent.

Mr. SIMPSON: I announce that the Senator from Colorado [Mr. BROWN], the Senator from Idaho [Mr. CRAIG], the Senator from Missouri [Mr. DANFORTH], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Alaska [Mr. STEVENS], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

I further announce that, if present and voting the Senator from Colorado [Mr. BROWN], would vote "nay."

The PRESIDING OFFICER (Mr. REID). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 15, as follows:

The result was announced—yeas 68, nays 15, as follows:

[Rollcall Vote No. 279 Leg.]

YEAS—68

Akaka	Exon	Mitchell
Baucus	Ford	Moynihan
Bentsen	Fowler	Nickles
Biden	Garn	Nunn
Bingaman	Glenn	Packwood
Bond	Gore	Pell
Boren	Gorton	Pressler
Bryan	Grassley	Riegle
Bumpers	Hatch	Robb
Burdick	Hatfield	Rockefeller
Burns	Heflin	Roth
Byrd	Inouye	Rudman
Chafee	Kennedy	Sarbanes
Coats	Lautenberg	Sasser
Cochran	Leahy	Seymour
Cohen	Levin	Simpson
Cranston	Lieberman	Smith
D'Amato	Lott	Specter
Dixon	Lugar	Thurmond
Dodd	Mack	Wallop
Dole	McCain	Warner
Domenici	McConnell	Wofford
Durenberger	Mikulski	

NAYS—15

Adams	Graham	Murkowski
Bradley	Hollings	Reid
Conrad	Kasten	Sanford
Daschle	Kerry	Shelby
DeConcini	Metzenbaum	Wellstone

NOT VOTING—17

Breaux	Helms	Pryor
Brown	Jeffords	Simon
Craig	Johnston	Stevens
Danforth	Kassebaum	Symms
Gramm	Kerrey	Wirth
Harkin	Kohl	

So the conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, on behalf of the majority leader, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

Mr. DIXON. I have to object to that.

The PRESIDING OFFICER. Objection is heard.

Mr. SPECTER. It is for a unanimous-consent request.

Mr. SEYMOUR. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The assistant legislative clerk continued to call the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I ask unanimous consent to proceed and put the vote aside for the moment.

The PRESIDING OFFICER. Is there objection?

Mr. SEYMOUR. I object.

The PRESIDING OFFICER. The Senator from Michigan is——

Mr. SEYMOUR. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. RIEGLE. Will the Senator withhold for a moment? I am trying to explain what we are going to do next, so we can resolve this issue and Senators who need to vote and leave can do so.

Mr. SEYMOUR. That is what I am afraid of, Mr. President; Senators are going to leave and leave California high and dry relative to the drought legislation. That is why I object, because they are going to leave.

Mr. RIEGLE. Mr. President, will the Senator withhold his objection? He has plenty of opportunities to prevent a vote. I just want to explain what the parliamentary situation is. Will the Senator object to my at least using this time for that purpose?

Mr. SEYMOUR. I object.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, we now are going to proceed in a manner that I hope will permit the Senators to leave shortly. I am going to ask unanimous consent that the pending matter be temporarily laid aside, and that four matters be taken up en bloc and approved; that upon the completion of those four matters Senator RIEGLE be recognized to make a statement with respect to the pending measure, the RTC funding resolution, following which the vote on that legislation will occur.

The only other major matter after that will be the Medicaid moratorium legislation. We have received no request for a rollcall vote on that measure, to my knowledge on either side. Therefore, unless someone asks for a rollcall vote now on that, we are going to assume that no rollcall vote will be necessary. I believe that matter has been resolved to the satisfaction of all concerned. If that is the case, then the vote on the RTC resolution which will follow the four matters en bloc should be the final rollcall vote.

Mr. President, I now ask unanimous consent that the pending measure be set aside to permit consideration of measures by Senators SEYMOUR, MCCAIN, and FOWLER; that those measures be considered en bloc—and—Mr. President, I amend my request to add Senator DOLE to that. So there would be five measures, Senators SEYMOUR, CRANSTON, MCCAIN, FOWLER, and DOLE.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RECLAMATION STATES EMERGENCY DROUGHT RELIEF

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 355.

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

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 355) entitled "An Act to provide emergency drought relief to the Reclamation States, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

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

From the Committee on 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 California, 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 conference: Mr. JONES of North Carolina, Mr. STUDDS and Mr. DAVIS.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate recede from its earlier amendment and that it be in order to further amend with a substitute amendment which I now send to the desk in behalf of Senator Johnston.

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

AMENDMENT NO. 1451

Mr. MITCHELL. Mr. President, I send an amendment in behalf of Mr. JOHNSTON 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 Maine [Mr. MITCHELL], for Mr. JOHNSTON, proposes an amendment numbered 1451.

Mr. MITCHELL. 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:

Delete all after the enacting clause and substitute the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation States Emergency Drought Relief Act of 1991".

SEC. 2. DEFINITIONS.

As used in this act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The Term "Federal Reclamation laws" means the Act of June 17, 1902 (32 Stat. 388) and Acts supplementary thereto and amendatory thereof.

(3) The term "Federal Reclamation project" means any project constructed or funded under Federal Reclamation law. Such term includes projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044).

TITLE I—DROUGHT PROGRAM

SEC. 101. ASSISTANCE DURING DROUGHT; WATER PURCHASES.

(a) CONSTRUCTION, MANAGEMENT, AND CONSERVATION.—Consistent with existing contractual arrangements and applicable State and applicable Federal law, and without further authorization, the Secretary is authorized to undertake construction, management, and conservation activities that will minimize, or can be expected to have an effect in minimizing, losses and damages resulting from drought conditions. Any construction activities undertaken pursuant to the authority of this subsection shall be limited to temporary facilities designed to minimize losses and damages from drought conditions, except that wells drilled to minimize losses and damaged from drought conditions may be permanent facilities.

(b) ASSISTANCE TO WILLING BUYERS AND SELLERS.—In order to minimize losses and damages resulting from drought conditions, the Secretary may provide non-financial assistance to willing buyers in their purchase of available water supplies from willing sellers.

(c) WATER PURCHASES BY BUREAU.—In order to minimize losses and damages resulting from drought conditions, the Secretary may purchase water from willing sellers, including, but not limited to, water made available by Federal Reclamation project contractors through conservation or other means with respect to which the seller has reduced the consumption of water. Except with respect to water stored, conveyed or delivered to Federal and State wildlife habitat, the Secretary shall deliver such water pursuant to temporary contracts under section 102: *Provided*, That any such contract shall require recovery of any costs, including interest if applicable, incurred by the Secretary in acquiring such water.

(d) WATER BANKS.—In order to respond to a drought, the Secretary is authorized to participate in water banks established by a State.

SEC. 102. AVAILABILITY OF WATER ON A TEMPORARY BASIS.

(a) GENERAL AUTHORITY.—In order to mitigate losses and damages resulting from drought conditions, the Secretary may make available, by temporary contract, project and non-project water and may permit the use of facilities at Federal Reclamation projects for the storage or conveyance of project or non-project water, for use both within and outside an authorized project service area.

(b) SPECIAL PROVISIONS APPLICABLE TO TEMPORARY WATER SUPPLIES PROVIDED UNDER THIS SECTION.—

(1) TEMPORARY SUPPLIES.—Each temporary contract for the supply of water entered into pursuant to this section shall terminate no later than two years from the date of execution or upon a determination by the Secretary that water supply conditions no longer warrant that such contracts remain in effect, whichever occurs first. The costs associated with any such contract shall be repaid within the term of the contract.

(2) OWNERSHIP AND ACREAGE LIMITATIONS.—Lands not subject to Reclamation law that receive temporary irrigation water supplies under temporary contracts under this section shall not become subject to the ownership and acreage limitations or pricing provisions of Federal Reclamation law because of the delivery of such temporary water supplies. Lands that are subject to the ownership and acreage limitations of Federal Reclamation law shall not be exempted from those limitation because of the delivery of such temporary water supplies.

(3) TREATMENT UNDER RECLAMATION REFORM ACT OF 1982.—No temporary contract entered into by the Secretary under this section shall be treated as a "contract" as that term is used in sections 203(a) and 220 of the Reclamation Reform Act of 1982 (Public Law 97-293).

(4) AMENDMENTS OF EXISTING CONTRACTS.—Any amendment to an existing contract to allow a contractor to carry out the provisions of this title shall not be considered a new and supplemental benefits for purposes of the Reclamation Reform Act of 1982 (Public Law 97-293).

(c) CONTRACT PRICE.—The price for project water, other than water purchased pursuant to section 101(c), delivered under a temporary contract entered into by the Secretary under this section shall be at least sufficient to recover all Federal operation and maintenance costs and administrative costs, and an appropriate share of capital costs, including interest on such capital costs allocated to municipal and industrial water, except that, for project water delivered to non-project landholdings, the price shall include full cost (as defined in section 202(3) of the Reclamation Reform Act of 1982 (Public Law 97-293; 96 Stat. 1263; 43 U.S.C. 390bb)). For all contracts entered into by the Secretary under the authority of this title,

(1) the interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs expended pursuant to this Act shall be at a rate to be determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with remaining periods to maturity of one year occurring during the last month of the fiscal year preceding the date of execution of the temporary contract or,

(2) in the case of existing facilities the rate as authorized for that Federal Reclamation project or,

(3) in the absence of such authorized rate, the interest rate as determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction was initiated on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which were neither due nor callable for redemption for fifteen years from date of issue: *Provided*, That for all deliveries of water for municipal and industrial purposes from existing facilities to non-project contractors, the rate shall be as set forth in paragraph (1) of this subsection.

(d) FISH AND WILDLIFE.—The Secretary may make water from Federal Reclamation projects and non-project water available on a nonreimbursable basis for the purposes of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or the operation of a Federal Reclamation project during drought conditions. The Secretary may store and convey project and non-project water for fish and wildlife purposes, and may provide conveyance of any such water for both State and Federal wildlife habitat and for habitat held in private ownership. The Secretary may make available water for these purposes outside the authorized project service area. Use of the Federal storage and conveyance facilities for these purposes shall be on a nonreimbursable basis. Water made available by the Secretary in 1991 from the Central Valley Project, California, to the Grasslands Water District for the purpose of fish and wildlife shall be nonreimbursable.

(e) NON-PROJECT WATER.—The Secretary is authorized to store and convey non-project water utilizing Federal Reclamation project facilities for use outside and inside the authorized project service area for municipal and industrial uses, fish and wildlife, and agricultural uses. Except in the case of water supplied for fish and wildlife, which shall be nonreimbursable, the Secretary shall charge the recipients of such water for such use of Federal Reclamation project facilities at a rate established pursuant to section 102(c) of this Act.

(f) RECLAMATION FUND.—The payment of capital costs attributable to the sale of project or non-project water or the use of Federal Reclamation project facilities shall be covered into the Reclamation Fund and be placed to the credit of the project from which such water or use of such facilities is supplied.

SEC. 103. LOANS.

The Secretary of the Interior is authorized to make loans to water users for the purposes of undertaking construction, management, conservation activities, or the acquisition and transportation of water consistent with State law, that can be expected to have an effect in mitigating losses and damages, including those suffered by fish and wildlife, resulting from drought conditions. Such loans shall be made available under such terms and conditions as the Secretary deems appropriate: *Provided*, That the Secretary shall not approve any loan unless the applicant can demonstrate an ability to repay such loan within the term of the loan; *Provided further*, That for all loans approved by

the Secretary under the authority of this section, the interest rate shall be the rate determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with periods to maturity comparable to the repayment period of the loan. The repayment period for loans issued under this section shall not exceed fifteen years. The repayment period for such loans shall begin when the loan is executed. Sections 203(a) and 220 of the Reclamation Reform Act of 1982 and sections 105 and 106 of Public Law 99-546 shall not apply to any contract to repay such loan. The Secretary shall notify the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives in writing of any loan which the Secretary intends to approve not less than 30 days prior to granting final approval.

SEC. 104. APPLICABLE PERIOD OF DROUGHT PROGRAM.

(a) IN GENERAL.—The programs and authorities established under this title shall become operative in any Reclamation State only after the Governor or Governors of the affected State or States, or on a reservation, when the governing body of the affected Tribe has made a request for temporary drought assistance and the Secretary has determined that such temporary assistance is merited, or upon the approval of a drought contingency plan as provided in title II of this Act.

(b) COORDINATION WITH BPA.—If a Governor referred to in subsection (a) is the Governor of the State of Washington, Oregon, Idaho, or Montana, the Governor shall coordinate with the Administrator of the Bonneville Power Administration before making a request under subsection (a).

(c) TERMINATION OF AUTHORITY.—The authorities established under this title shall terminate ten years after the date of enactment of this Act.

TITLE II—DROUGHT CONTINGENCY PLANNING

SEC. 201. IDENTIFICATION OF OPPORTUNITIES FOR WATER SUPPLY CONSERVATION, AUGMENTATION AND USE.

The Secretary is authorized to conduct studies to identify opportunities to conserve, augment, and make more efficient use of water supplies available to Federal Reclamation projects and Indian water resource developments in order to be prepared for and better respond to drought conditions. The Secretary is authorized to provide technical assistance to States and to local and Tribal government entities to assist in the development, construction, and operation of water desalinization projects, including technical assistance for purposes of assessing the technical and economic feasibility of such projects.

SEC. 202. DROUGHT CONTINGENCY PLANS.

The Secretary, acting pursuant to the Federal Reclamation laws, utilizing the resources of the Department of the Interior, and in consultation with other appropriate Federal and State officials, Indian tribes, public, private, and local entities, is authorized to prepare or participate in the preparation of cooperative drought contingency plans (hereinafter in this title referred to as "contingency plans") for the prevention or mitigation of adverse effects of drought conditions.

SEC. 203. PLAN ELEMENTS.

(a) PLAN PROVISIONS.—Elements of the contingency plans prepared pursuant to section 202 may include, but are not limited to, any or all of the following:

(1) Water banks.

(2) Appropriate water conservation actions.

(3) Water transfers to serve users inside or outside authorized Federal Reclamation project service areas in order to mitigate the effects of drought.

(4) Use of Federal Reclamation project facilities to store and convey non-project water for agricultural, municipal and industrial, fish and wildlife, or other uses both inside and outside an authorized Federal Reclamation project service area.

(5) Use of water from dead or inactive reservoir storage or increased use of ground water resources for temporary water supplies.

(6) Water supplies for fish and wildlife resources.

(7) Minor structural actions.

(b) FEDERAL RECLAMATION PROJECTS.—Each contingency plan shall identify the following two types of plan elements related to Federal Reclamation projects;

(1) those plan elements which pertain exclusively to the responsibilities and obligations of the Secretary pursuant to Federal Reclamation law and the responsibilities and obligations of the Secretary for a specific Federal Reclamation project; and

(2) those plan elements that pertain to projects, purposes, or activities not constructed, financed, or otherwise governed by the Federal Reclamation law.

(c) DROUGHT LEVELS.—The Secretary is authorized to work with other Federal and State agencies to improve hydrologic data collection systems and water supply forecasting techniques to provide more accurate and timely warning of potential drought conditions and drought levels that would trigger the implementation of contingency plans.

(d) COMPLIANCE WITH LAW.—The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321), section 715(a) of the Water Resource Development Act of 1986 (33 U.S.C. 2265(a), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law.

(e) REVIEW.—The contingency plans shall include provisions for periodic review to assure the adequacy of the contingency plan to respond to current conditions, and such plans may be modified accordingly.

SEC. 204. RECOMMENDATIONS.

(a) APPROVAL.—The Secretary shall submit each plan prepared pursuant to section 202 to the Congress, together with the Secretary's recommendations, including recommendations for authorizing legislation, if needed.

(b) PACIFIC NORTHWEST REGION.—A contingency plan under subsection (a) for the State of Washington, Oregon, Idaho, or Montana, may be approved by the Secretary only at the request of the Governor of the affected State in coordination with the other States in the region and the Administrator of the Bonneville Power Administration.

SEC. 205. RECLAMATION DROUGHT RESPONSE FUND.

The Secretary shall undertake a study of the need, if any, to establish a Reclamation Drought Response Fund to be available for defraying those expenses which the Secretary determines necessary to implement plans prepared under section 202 and to make loans for nonstructural and minor structural activities for the prevention or mitigation of the adverse effects of drought.

SEC. 206. TECHNICAL ASSISTANCE AND TRANSFER OF PRECIPITATION MANAGEMENT TECHNOLOGY.

(a) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide technical assistance for drought contingency planning in any of the States not identified in section 1 of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), and the District of Columbia, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship, the Republic of Palau, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(b) TECHNOLOGY TRANSFER PROGRAM.—The Secretary is authorized to conduct a Precipitation Management Technology Transfer Program to help alleviate problems caused by precipitation variability and droughts in the West, as part of a balanced long-term water resources development and management program. In consultation with State, Tribal, and local water, hydropower, water quality and instream flow interests, areas shall be selected for conducting field studies cost-shared on a 50-50 basis to validate and quantify the potential for appropriate precipitation management technology to augment stream flows. Validated technologies shall be transferred to non-Federal interests for operational implementation.

TITLE III—GENERAL AND MISCELLANEOUS PROVISIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Except as otherwise provided in section 303 of this Act (relating to temperature control devices at Shasta Dam, California), there is authorized to be appropriated not more than $90,000,000 in total for fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 302. AUTHORITY OF SECRETARY.

The Secretary is authorized to perform any and all acts and to promulgate such regulations as may be necessary and appropriate for the purpose of implementing this Act. In carrying out the authorities under this Act, the Secretary shall give specific consideration to the needs of fish and wildlife, together with other project purposes, and shall consider temporary operational changes which will mitigate, or can be expected to have an effect in mitigating, fish and wildlife losses and damages resulting from drought conditions, consistent with the Secretary's other obligations.

SEC. 303. TEMPERATURE CONTROL AT SHASTA DAM, CENTRAL VALLEY PROJECT.

The Secretary is authorized to complete the design and specifications for construction of a device to control the temperature of water releases from Shasta Dam, Central Valley Project, California, and to construct facilities needed to attach such device to the dam. There is authorized to be appropriated to carry out the authority of this section not more than $12,000,000.

SEC. 304. EFFECT OF ACT ON OTHER LAWS.

(a) CONFORMITY WITH STATE AND FEDERAL LAW.—All actions taken pursuant to this Act pertaining to the diversion, storage, use, or transfer of water shall be in conformity with applicable State and applicable Federal law.

(b) EFFECT ON JURISDICTION, AUTHORITY, AND WATER RIGHTS.—Nothing in this Act shall be construed as expanding or diminishing State, Federal, or Tribal jurisdiction or authority over water resources development, control, or water rights.

SEC. 305. EXCESS STORAGE AND CARRYING CAPACITY.

The Secretary is authorized to enter into contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities, pursuant to the Act of February 21, 1911 (43

U.S.C. 523), for the impounding, storage, and carriage of non-project water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes using any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California, the Truckee Storage Project, and the Washoe Project, California and Nevada. The Secretary is further authorized to enter into contracts for the exchange of water for the aforementioned purposes using facilities associated with the Cachuma Project, California.

SEC. 306. REPORT.

There shall be included as part of the President's annual budget submittal to the Congress a detailed report on past and proposed expenditures and accomplishments under this Act.

SEC. 307. FEDERAL RECLAMATION LAWS.

This Act shall constitute a supplement to the Federal Reclamation laws.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. WALLOP. I rise to urge immediate passage of H.R. 355, the Reclamation States Emergency Drought Relief Act of 1991 as amended. Passage is long overdue. After all, there is a drought; and to people who are trying to live with less than enough water, it is an emergency. Precisely because this bill should have been passed easily this spring, so some drought relief could be made available this summer, certain Members seemed to think it could be used to accomplish other ends. In the Senate, drought relief was delayed to try to force action on the central valley project legislation and we have been treated in the last week to an effort by the chairman of the House Interior and Insular Affairs Committee to delay action unless the Senate took up reclamation reform and the other elements of the House's social agenda. Those actions, and the insensitivity they demonstrate, are simply unconscionable.

I want to commend Senator BURNS, the ranking member of the Subcommittee on Water and Power, for his efforts. When this legislation was being held hostage in the subcommittee, he forced in onto the committee's agenda and circulated amendments in July. The committee managed to delay consideration until the end of September, but Senator BURNS finally prevailed and deserves the credit for this measure escaping the committee.

Mr. President, I urge my colleagues to look at the calendar. It may come as a surprise to those whose concept of a food chain begins at the grocery store, that a whole growing season has passed. A whole growing season during one of the most severe droughts in memory. We have reached an agreement. It is not totally to anyone's satisfaction but at least it clears the way to provide some measure of drought relief to citizens in the reclamation States. Let me pass this bill and allow the Secretary of the Interior to begin to do what he should have been allowed to do last July or earlier.

There are some fundamental disagreements between the House and the Senate about what the nature and extent of the Federal role, particularly that of the Secretary of the Interior, should be in drought situations. The Senate has acquiesced to the House, not because we agree with their position, but because that was the only way to get this bill passed. In the West, there are certain immutable inevitabilities. One of those is that droughts will continue to occur. We have passed drought relief legislation twice before in the last 15 years, and we're doing it again. It would seem only sensible to make drought relief authority for the Secretary of the Interior a permanent one but the House insisted on a sunset provision. The only plausible explanation that I can imagine for wanting to limit the length of time that these authorities are available is to guarantee that there will be a future opportunity to pursue other agencies under the mantle of emergency drought relief. Either they believe there will never be another drought anywhere in the West or they simply enjoy using people's pain to extort their personal tribute.

The House insisted on a 10-year limitation on the Secretary's authority. It will be truly ironic if the next drought emergency is a 2-year occurrence beginning 10 years hence. In the 10th year, the Secretary can immediately take steps to deal with it but the following year we'll be right back here arguing to extend his authority. If present experience is any example, the rains will come before the bill is passed.

Similarly, there was a disagreement over whether or not farmers should be allowed to defer payments owed to the Secretary during drought years. It stands to reason that if you are a farmer; and your income is from the crops you grow; and there is not enough water to grow your crops; you might have severely reduced income. This was recognized and accepted over 4,000 years ago in the first agricultural civilization. In the Code of Hammurabi, it says:

> If a man is liable for interest, and the god Adad has flooded his field, or the harvest has been destroyed, or the corn has not grown through lack of water; then in that year he shall not pay corn to this creditor.

Even with this legal precedent, the House feels somehow that is ought not to apply in 20th century America. The Senate disagrees, but viewing the prospect of another drought year with no authority for the Secretary to assist farmers in trouble, we went along.

It is also ironic that it is the chairman of the House committee who objects so strongly to this provision. He is quick to denounce any water being used for agriculture, but objects to a provision which would have given the Secretary authority, during a drought, to have water users forego their contractual entitlement so that the water could be made available to urban areas and for wildlife habitat.

This is not a bad bill. If it were, I would not support it. There are many worthy provisions in it. It authorizes the construction of temporary facilities, allows the Secretary to purchase water from willing sellers, authorizes non-financial assistance to willing buyers and sellers, and authorizes temporary water contracts. It authorizes the use of reclamation facilities to assist in the transport of water even outside the project service area. It authorizes loans at Treasury rates to assist in ameliorating drought impacts. It authorizes the preparation of comprehensive drought contingency plans. These are needed authorities which should help mitigate some of the effects of drought in the West. This is a good bill. It could have been a better bill had the House simply accepted the Senate amendments. It could have been a more timely bill if the Energy and Natural Resources Committee had not held it up for 4 months. Someday we may stop the hostage taking and start serving the public. This is at least a start.

Mr. President, there are people out there who need such help as can be provided and they need it now. I urge my colleagues to sense the urgency, place aside any other agendas and support and pass this compromise so that the Secretary of the Interior can get about the business of government which is to help its citizens.

Mr. SEYMOUR. Mr. President, I am pleased that at long last this emergency drought bill is before the Senate for final passage.

This important legislation is critical not only to the State of California but also to many other Western States suffering from continued drought.

California, in particular, has suffered through 5 years of drought and everything seems to point toward a 6th year. Losses to agricultural production, decreases in urban supplies and severe damage to fish and wildlife resources from the prolonged drought have been devastating. The Bureau of Reclamation has already announced that even a year of normal rainfall will not provide the storage, water supply or environmental recovery necessary for my State. The Bureau has also indicated that further reductions of water supplies to agricultural contractors are likely should this drought persist.

On October 31, 1991, the Senate passed H.R. 355, the Reclamation States Emergency Drought Relief Act of 1991. I was pleased to support the Senate bill, as it

incorporated many of the provisions from S. 711, the drought relief bill which I introduced on March 21 of this year.

H.R. 355 as passed by the Senate was good legislation. In fact, two of the provisions in this bill would have been particularly beneficial to citizens in California. These included providing the Secretary of the Interior with permanent authority to assist States suffering from drought and allowing the Secretary to defer payments from water users whose deliveries were cut back due to drought induced shortages.

Unfortunately, these two provisions were struck from the bill during negotiations with the House. The bill pending now for final passage in the Senate provides a sunset limitation of 10 years on the Secretary's authority. As I understand, drought conditions seem to hit California in 9-year cycles. Now, if in 7 or 8 years another 5-year drought returns, under the provisions in this bill, the Secretary's authority to assist the Western States would expire in the middle of the drought. I don't know the reasoning that went into placing this limitation on the Secretary's authority, but it insures that California and other Western States will be held hostage by Congress to extend the Secretary's authority should another drought occur.

Experience has shown that the time for drought assistance is often past before this body can act. This occurred during the western region's drought in 1977–78 and again in 1982. It has happened again this year. Providing permanent authority to the Secretary of the Interior will enable him to prepare for and to respond to any future drought. Anything less will leave the Secretary unable to respond in a timely manner. I think it is unfortunate that he has been denied this permanent authority.

I am pleased to note, however, that Public Law 102–27 appropriated $25 million to meet emergency drought needs in the United States. Of this amount, over $4.5 million has been designated for emergency projects in California. Three-quarters of California's share will be used on fish and wildlife projects.

Mr. President, despite the shortcomings in this bill, California is in dire need for assistance. Therefore, I support its passage and hope that the Department of the Interior will implement the regulations and begin helping those in need as soon as possible.

Mr. BURNS. I rise today in support of H.R. 355, the Reclamation States Emergency Drought Relief Act of 1991. When I requested back in July that this legislation be placed on the committee agenda for immediate action, I intended the word immediate to mean what it means to most people. I am truly perplexed that we are now considering this emergency bill in the closing days of this session. Without going into specifics, let me just point out that this emergency bill has been held hostage both by the chairman of the Senate Subcommittee on Water and Power and by the chairman of the House Committee on Interior and Insular Affairs as a means to pursue their personal agendas while thousands of hard working families were denied relief from the drought that this bill would provide.

I have been in agriculture. I know what it means to need water and not have it. I am embarrassed that a few individuals in this Congress are so insensitive to the people in the West affected by the current drought. A whole summer has gone by. A whole crop season. Now, I sincerely hope that we will not face another dry year. But the West being the West, we can be sure of a few things and another drought is one of them. That is why I am very disappointed that the House feels that there ought to be a limit to how long the Secretary's drought authority will last. It just does not make sense to me. That is why I tried to make this drought authority permanent. The House compromised on 10 years. That is not a compromise, that is a guaranteed instant replay of this present sorry situation.

Mr. President, my colleagues in the Senate recognized that this authority ought to be permanent. We should all be on our guard if there's a drought in 2002—at least those of us who are still here—because somehow I just suspect that there will be something else added to the drought reauthorization bill on its way by. I am an old livestock trader. I know how to get the best of a deal. I can assure those individuals who have obstructed this legislation that they will be in for some seriously hard bargaining the next time around. The people who elected us to serve them deserve better than they got this time and I will do everything I can to make sure they get a better deal next time.

We also had to compromise on the deferment of repayments, if you can call deleting that section a compromise. It just makes sense to allow a farmer who has suffered income loss because of drought to defer payments to the Government. It was not forgiveness, just deferment to a later time when the farmer could better afford it. We heard "When there's a drought, times are tough." It makes no sense to me for the Government to make things tougher, but that's what we had to do to get a bill. Actually it would be funny if it weren't so sad. The deferment of payments would have made it relatively easy for a farmer to choose to take no water and just not plant that year. The water could have been made available for urban use or for fish and wildlife. Without payment deferment, a farmer is going to have to use what water he can get and grow what he can, whether he wants to or not, just to make his operation and maintenance payments. This situation was brought to you by the people who are so vocal about water conservation. I am sorry, Mr. President, but this only makes sense to me if you are trying every way you can to drive farmers out of business.

Mr. President, there was a bumper sticker out several years ago that said "If you want to complain about farmers, don't do it with your mouth full." I'd like to paraphrase it. If you want to vote to make life for farmers as difficult as possible, don't vote with your mouth full. This emergency drought relief bill got caught up in the ongoing western water wars. It was used as a pawn in a large social agenda chess game. A lot of hard working families who could have been helped by this bill weren't, this year. Now is the time to pass it so they can be helped, at least for the next 10 years.

Even with the compromises this is still a good bill. It provides important authorities for the Secretary of the Interior to help alleviate some of the hardships of drought in the reclamation States. It authorizes comprehensive drought contingency planning. It should have been passed in July. We should pass it now. We should, at the same time, recognize that the taking of hostages anywhere, anytime will hurt someone. The people who got hurt this time did not deserve it but some of our colleagues will deserve it if they decide to get even.

BRONZE STAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration of S. 2015 regarding the Bronze Star, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2015) to urge and request the award of the bronze star to Navy and Marine Corps personnel who served in the defense of Corregidor Island, the Philippines, under General Wainwright.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Without objection, the bill is read three times and passed.

The bill (S. 2015) was deemed read the third time, and passed 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. AWARDS 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 Philippines, 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.

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

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

The motion to lay on the table was agreed to.

THE CHATTAHOOCHE NATIONAL FOREST PROTECTION ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3245, the Chattahooche National Forest Protection Act of 1991 just received from the House; that the bill be deemed read three times and passed; and that the motion to reconsider be laid upon the table.

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

PHOENIX INDIAN SCHOOL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from further consideration of S. 2034, relating to the Phoenix Indian school, and that the Senate proceed to its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2034) to establish certain requirements for the Secretary of the Interior to undertake environmental cleanup at the Phoenix Indian School property.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1452

(Purpose: To establish certain requirements for the Secretary of the Interior to undertake environmental cleanup at the Phoenix Indian School property)

Mr. SEYMOUR. Mr. President, I send an amendment to the desk on behalf of Senator MCCAIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mr. SEYMOUR], for Mr. MCCAIN, proposes an amendment numbered 1452.

Mr. SEYMOUR. 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:

Delete Section 1 of the bill in its entirety and substitute therefor the following:

"SECTION 1. The Secretary of the Interior shall remove, at the earliest possible date, all asbestos within buildings and related infrastructure, including underground pipes, located on the 110 acre parcel of Federal property known as the Phoenix Indian School. The obligation of the Secretary to carry out these activities shall continue beyond the date of transfer of the Phoenix Indian School property from Federal ownership."

Mr. SIMON. Mr. President, would the distinguished vice-chairman of the Select Committee on Indian Affairs yield for a colloquy?

Mr. MCCAIN. I would be pleased to yield to the distinguished Senator from Illinois.

Mr. SIMON. I understand that S. 2034 is intended to resolve an uncertainty that has arisen regarding the Indian school land exchange. I am also aware that the exchanges are extremely complex and that their successful conclusion will bring about substantial benefits for the United States, the city of Phoenix, and the Indian tribes in Arizona. I certainly support the goals of the exchange. However, I am concerned that under S. 2034 the Secretary of the Interior may seek to fund any asbestos cleanup by utilizing funds otherwise appropriated for other Indian programs. Is that the intention of the Senator from Arizona?

Mr. MCCAIN. I thank my friend from Illinois. It is absolutely not our intention that the Secretary use funds intended for other Indian programs to effectuate any cleanup of the asbestos. Preliminary cost estimates prepared by the Department of the Interior place the cost of asbestos abatement at the school at about $770,000. It is our intention to seek a separate appropriation for the abatement once the Department has provided us with a firm cost figure. In addition, I would note for the Senator from Illinois that the only way the Secretary could utilize funds appropriated for other Indian programs would be through a reprogramming request approved by the Appropriations Subcommittees on Interior and Related Agencies of both the House and Senate because the amount involved exceeds $250,000. I can assure my friend that were the Secretary to make such a request I would strongly oppose it as I believe would all members of the Select Committee on Indian Affairs, several of whom also serve on the Appropriations Committee. I thank my friend for his question and appreciate his service on the committee and commitment to the welfare of Native Americans. I would note that resolution of the asbestos cleanup question will enable us to secure a $35-million Indian Education Trust Fund which is critical.

Mr. SIMON. I appreciate the response of the Senator from Arizona. I can certainly assure him that this Senator would join in opposing any such reprogramming request.

The PRESIDING OFFICER. Without objection, the amendment (No. 1452) is agreed to.

Mr. SEYMOUR. 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.

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, was read the third time, and passed, as follows:

(The text of the measure as passed the Senate today will be printed in a future edition of the RECORD.)

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

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

The motion to lay on the table was agreed to.

THE WHITE HOUSE COMMEMORATIVE COIN ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3337, the 1992 White House Commemorative Coin Act, just received from the House.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3337) to require the Secretary of the Treasury to mint a coin in commemoration of the two hundredth anniversary of the White House, 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.

AMENDMENT NO. 1453

(Purpose: To modernize United States circulating coin designs, of which one reverse will have a theme of the Bicentennial of the Bill of Rights, and other purposes)

Mr. MITCHELL. Mr. President, on behalf of Senators CRANSTON, WALLOP, KENNEDY, and HATCH, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. CRANSTON (for himself, Mr. WALLOP, Mr. KENNEDY, and Mr. HATCH) proposes an amendment numbered 1453.

Mr. MITCHELL. 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:

TITLE _____—COINS

SEC. _____01. DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS.

Subsection (d)(1) of section 5112 of title 31, United States Code, is amended by striking the fourth sentence.

SEC. _____02. DESIGN CHANGES REQUIRED FOR CERTAIN COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) The design on the reverse side of the half dollar, quarter dollar, dime coin, 5-cent coin and one-cent coin shall be selected for redesigning. One or more coins may be selected for redesign at the same time, but the first redesigned coin shall have a design commemorating the two hundredth anniversary of the ratification of the Bill of Rights to the United States Constitution for a period of 2 years after issuance. After the 2-year period, the bicentennial coin shall have its design changed in accordance with the provisions of this subsection. The minting of the first selected coin shall begin January 1993, and the issuance shall begin as soon as practical thereafter. All such redesigned coins shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. _____03. DESIGN ON OBVERSE SIDE OF COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) Subject to paragraph (2), the design on the obverse side of the half dollar, quarter dollar, dime coin, 5-cent coin, and one-cent coin shall contain the likenesses of those currently displayed and shall be considered for redesign. All such coin obverse redesigns shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. _____04. SELECTION OF DESIGNS.

The design changes for each coin authorized by the amendments made by this title shall take place at the discretion of the Secretary and shall be done at the rate of one or more coins per year, to be phased in over 6 years after the date of the enactment of this Act. In selecting new designs, the Secretary shall consider, among other factors, thematic representations of the following concepts from the Bill of Rights: freedom of speech and assembly; freedom of the press; the right to due process of law; and other appropriate themes. The designs shall be selected by the Secretary upon consultation with the United States Commission of Fine Arts.

SEC. _____05. REDUCTION OF THE NATIONS DEBT.

Subsection (a)(1) of section 5132 of title 31, United States Code, is amended by inserting after the third sentence the following: "Any profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

TITLE _____—JAMES MADISON COINS

SEC. _____01. SHORT TITLE.

This title may be cited as the "James Madison—Bill of Rights Commemorative Coin Act".

SEC. _____02. 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 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 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 title shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. _____03. SOURCES OF BULLION.

(a) GOLD.—The Secretary shall obtain gold for minting coins under this title 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. _____04. 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 title may be issued beginning on January 1, 1993.

(d) TERMINATION OF AUTHORITY.—Coins may not be minted under this title after December 31, 1993.

SEC. _____05. SALE OF COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this title 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 at a reasonable discount.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted

under this title 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 per coin for the one dollar coins, and $3 per coin for the half dollar coins.

SEC. ____06. 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 title 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 title 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.

SEC. ____07. 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. ____08. 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 ___07 of this title. The expenditures and audit of surcharge funds deposited in the James Madison Memorial Fellowship Trust Fund under section ___07 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. ____09. 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 title.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1453) was agreed to.

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

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

The motion to lay on the table was agreed to.

PRECEDENT AND CAPACITY

Mr. CRANSTON. Mr. President, I thank my friend and colleague, Senator MALCOLM WALLOP, for the important part he has played in advancing this amendment. I thank many others for their contributions. The United States has changed coin design 65 times before in our Nation's history. Every change has made a profit for the Government.

This legislation would require new designs on the reverses—tail sides—of the penny, nickel, dime, quarter, and half dollar. The Presidents on the obverses—face sides—would remain on the coins. The size, shape, weight, color and metallic content would remain the same. All inscriptions including "In God We Trust" will remain on the coins.

The 1975–76 Bicentennial reverses of the quarter, half dollar, and dollar minted in celebration of the 200th anniversary of our Nation's independence were very favorably received by the public and raised substantial profit for the Treasury.

Every Western nation changes its coins with great regularity. The former Mint Director, Donna Pope, testifying before the House Subcommittee on Consumer Affairs and Coinage on July 12, 1990, said that the Mint has "sufficient capacity to implement the 6-year coinage redesign legislation".

PROVEN REVENUE RAISER

The Post Office changes stamp designs 24 times every year. It makes a huge profit because of purchases by 10 million stamp collectors. The 1989 profit was approximately $200 million.

The Nation's 10 million coin collectors insure that coin design change will produce huge profits. On June 23, 1988, a conservative CBO study estimated that the proposed six new designs will produce a total profit of $155 million through above-normal seignorage in 4 years: $36 million in year 1, $42 million in year 2, $47 million in year 3, $30 million in year 4. CBO estimated that this increased seignorage will also reduce Federal interest costs by $29 million in the first 4 years. CBO additionally stated that there will be $18 million profit in collector sets sales over a 6-year period. This money will go directly to the Treasury to reduce national debt. Seigniorage is the difference between the cost and the sales price of a coin. Example: It costs 2.5 cents to make a quarter for a seignorage profit of 22.5 cents.

CONGRESSIONAL SUPPORT

Senate support: The coin redesign bill was approved by the Senate unanimously six times in the last Congress. It had 68 cosponsors.

House support: The coin redesign bill had 278 cosponsors.

Opponents of this legislation erroneously state that the public disfavor in 1978 over the Susan B. Anthony dollar indicates that the public will not accept proposed coin redesigns. The Anthony dollar was not a design change. It was different in shape and size. It was not the design on the coin to which the public objected. The Anthony dollar also failed because the dollar bill was not taken out of circulation, and because it was so similar in size, shape, and appearance to the quarter.

HISTORY

Historically, coins have played a great part in the lives of the people of our country. They are the most tangible symbols of our Nation in our daily lives. We touch them, examine them, carry them around in our pockets and purses.

Beth Deisher, editor of Coin World, testified eloquently on November 22. She said:

> Our founding fathers understood the importance of a federal coinage. Benjamin Franklin, Robert Morris, Thomas Jefferson and Alexander Hamilton—leading thinkers of their day—each suggested coinage systems for the new United States.
>
> Coinage and the establishment of a Mint, in fact, were so important that President George Washington spoke about coinage issues and the need for a national Mint in his first three addresses to Congress—in 1789, 1790 and 1791.
>
> Our founding fathers had very definite ideas with regard to the designs depicted on our coins.

More recently, when President Theodore Roosevelt was asked what he thought was the most important contribution of his administration he replied, "the coinage of the United States Mint." One of Roosevelt's top priorities upon assuming office was improving the quality of the designs of American coins.

TODAY

I am concerned, however, with the direction the mint has taken over the past decade. Rather than carry out its responsibility for promoting and initiating coin redesign and marketing programs, as undertaken by many foreign mints around the world, the U.S. Mint has taken a do-nothing attitude unless mandated otherwise by Congress. I have heard many complaints about a lack of leadership at the mint.

I hope that under a new Director's leadership—David J. Ryder if he is confirmed—our coins will be redesigned more effectively to represent themes regarding the bicentennial of the Bill

of Rights and individual amendments that comprise that great document—ideals which are the essence of our freedoms and our system of justice. I hope that the mint's age of resistance to change will come to an end.

Mr. President, I ask unanimous consent that the full text of the testimony of Coin World editor Beth Deisher at Mr. Ryder's November 22 confirmation hearing appear at this point in the RECORD.

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

STATEMENT OF COIN WORLD EDITOR BETH DEISHER BEFORE THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS CONFIRMATION HEARING OF DAVID J. RYDER AS DIRECTOR, U.S. MINT—NOVEMBER 22, 1991

Mr. Chairman, my name is Beth Deisher. I am editor of Coin World, the world's largest news weekly serving the field of numismatic collectibles. Published in Sidney, Ohio, Coin World is in its 31st year of publication.

Thank you for inviting Coin World to present testimony on the historical role of the Mint in the production of coins and for the opportunity to present our views on the Mint's responsibility for redesigning U.S. coins.

Our founding fathers understood the importance of a federal coinage. Benjamin Franklin, Robert Morris, Thomas Jefferson and Alexander Hamilton—leading thinkers of their day—each suggested coinage systems for the new United States.

Coinage and the establishment of a Mint, in fact, were so important that President George Washington spoke about coinage issues and the need for a national Mint in his first three addresses to Congress—in 1789, 1790 and 1791. By resolution passed on March 3, 1791, the U.S. Mint was established and little more than a year later, the enabling law, the Mint Act of April 2, 1792, was approved, setting forth the denominations, specifications and legal tender status for the first U.S. coins. The coinage system which gained approval was based on the decimal plan advocated by Hamilton, the nation's first Secretary of the Treasury.

That Act of April 2, 1792, also authorized the construction of a minting facility, which became the first building to be constructed by the federal government. The Act of April 2, 1792, also specified the positions that would be required, outlined their responsibilities and set their salaries.

It is significant that our founding fathers tapped David Rittenhouse to be the nation's first Mint Director. At the time of his appointment, Dr. Rittenhouse was widely considered to be America's top scientist. Our founding fathers sought the very best for such an important assignment.

It is also significant that our founding fathers had very definite ideas with regard to the designs depicted on our coins. If fact, the design parameters set forth in 1792 still affect designs of our coins today because therein embodied are the mandates for the word Liberty and the year of issue to appear on all of our coins. Many in Congress thought President Washington's portrait should be on our coins, but Washington vehemently opposed it. He did not want to be perceived as a king. The prevailing wisdom of that time was not to elevate any mortal to such lofty heights, but rather to require that all coins depict an impression symbolic of Liberty. Indeed, Liberty was personified as an allegorical figure for more than 115 years thereafter.

Dr. Cornelius Vermeule, Curator of Classical Art at the Museum of Fine Arts in Boston and author of Numismatic Art in America, brings perspective here:

"A nation fashioned as was the United States needed a coinage as different from the immediate past as the ideals of sovereignty and forms of government with which the country first developed. . . . It is to the credit of the Revolutionary leaders that, from the beginning, they sought designs and styles for the coinage which would be original and expressive of the nation's intellectual aspirations. Ten years were necessary, from 1782 to 1792, to bring a true federal coinage into being. The founding fathers thought and wrote extensively about the symbolism involved in the designs, and they were able to reject nearly all visual reliance on the long-established coinages of major European nations. The problems of a new coinage were iconographic and aesthetic. As a result, sources for obverse and reverse compositions, from figures to lettering and secondary decoration, had to come from contemporary European and American art of all forms. . . . Coins from 1793 through 1836 manifest all the symptoms of a young republic striving to find its iconographic and artistic identity, and, therefore, have always been objects of charm and, at worst, primitive beauty. The Neoclassic designs instituted in the years following 1836 gave United States coins a dignity and originality worthy of any struck pieces in any age. It is only unfortunate that a mediocre version of these types persisted for too long—over fifty years—until the eve of the Chicago World's Fair of 1892. Part of the reason for this was no doubt the fact that the nation was torn apart by civil war from 1861 to 1865.

"The artistic upheaval that began in 1892 led to one of the most beautiful regular coinages ever conceived, but it did not become effective until the decade from 1906 to 1916."

It is clear from the historical record and the coins and pattern coins which have survived that Mint officials and the artists in their employ during the Mint's first 100 years were striving to create a coinage of quality in design and content. It is equally clear that in 1892 as the U.S. Mint began its second century of service those in charge believed they must take a leadership role in ensuring the quality of coinage design for the United States.

Let us pause here for a U.S. Mint Centennial Report:

The Fall of 1891 was a time of great excitement. Mint engravers were at a feverish pitch as they worked on the dies for the new designs which were to be introduced in January 1892. No one was more excited than Mint Director Edward O. Leech. At his urging, legislation had been approved by the Fifty-first Congress and signed into law September 26, 1890, granting authority to the Mint Director and the Secretary of the Treasury to change the designs of circulating coins after they had been in circulation for 25 years. As noted in his Report of the Director of the Mint for Fiscal Year Ended June 30, 1890, Leech was concerned that "the designs upon many of our coins date back a period of half a century." An accompanying table showed all six gold denominations, three of the four silver coins and one of the minor coins were eligible immediately for new designs.

The ability to bring new designs to the nation's coinage every 25 years represented a major triumph for the U.S. Mint. As early as December 5, 1883, the chairman of the Senate Finance Committee, Sen. Justin S. Morrill, in a floor speech had criticized the artistic execution, as well as other characteristics of our coinage, and pointed out to his fellow lawmakers that the then current law only allowed for new designs at such time as new denominations were approved. He noted that "the Director of the Mint, the coiner and engraver, do not appear to have any discretion in regard to existing coins."

James P. Kimball of Pennyslvania became Mint Director in July 1885. In his Report of the Director of the Mint for Fiscal Year Ended June 30, 1887, Kimball began laying the groundwork for new designs, using just over six pages of his official report for a historical overview and statement of need:

"Having become aware of what I believe to be a popular desire for an improvement of the coinage in respect to the present designs (distinguished from devices) as prescribed by law, I deem it my duty to here invite attention to this matter, and to offer such suggestions as seem to be proper to the office now held by me.

"It is sometimes considered that Congress has advisedly omitted to provide for the execution of its coinage in keeping with the art of the day, for the reason that any unnecessary change of design is contrary to the interests of the public. Whether this is so can hardly be said. It is open to question, however, how far artistic merit in coins should be sacrificed to custom."

We learn from Kimball's 1888 report that by that time he had drafted a legislative proposal, with the approval and support of Secretary of the Treasury C.S. Fairchild, and Sen. Morrill introduced it March 15, 1888.

In giving his support to the legislative initiative Fairchild, in a letter to Sen. Morrill, noted:

"The designs at present employed on our older coins date from periods of thirty to fifty years, and are commonly recognized as far behind the state which the arts of design and sculpture have since attained."

In the text of his report Kimball would advocate the ability to change designs even more fervently:

"The designs impressed upon the coins of any nation, ancient or modern, are accepted as an expression of the art of their time. But few citizens, who, with an artistic sense, have carefully scrutinized the current coins of this Republic, would consent to accept as a standard of excellence for their own day and generation almost any of the present compositions of statutory devices. . . ."

Optimistic that his drive to change the designs would find favor in Congress, Kimball noted his preference of having the ability "to engage the services of artists distinguished in their respective departments of art as opposed to public design competitions." He elaborates:

"The question now arises, who shall decide between the claims of artists more or less distinguished? . . . In selection of designs, however, this responsibility might be further divided, not necessarily by law, so as to admit also of the service of judges distinguished for their discernment in matters of art and design; such judges, on the invitation of the Secretary of the Treasury, to act with the Director of the Mint in the acceptance or rejection of designs submitted. The above suggestions are made not without full recognition of the fact that the voice of every citizen of the United States is heard upon a matter of art or aesthetics such as a design employed on a familiar coin of the Republic; or of the fact that while distinguished artists stand ready to offer designs, no public officer could reasonably be called upon alone to pass upon the professional merit of artists or the art value of their productions."

When Kimball left office in October 1889 his proposal had not yet gained passage in the House of Representatives. However, his successor, Edward O. Leech of the District of Columbia, embraced the cause and pressed ahead. Within a year, Kimball's goal had been accomplished.

In his 1891 Leech noted:

"To help make the coins of the United States worthy, from the point of view of the beautiful, of our country, at the beginning of the second century of its existence, is the object of my recommendations as to new and improved designs."

Under Leech's direction a design competition was held and a jury comprising sculptor Augustus Saint-Gaudens, outside engraver Henry Mitchell, and Mint Engraver Charles E. Barber reviewed the submitted designs or models. The jury concluded that none of the submissions were worthy. Leech then directed Barber to prepare new designs for the half dollar, quarter dollar, and dime.

It is clear from the historical record that the legislative authority to change designs after 25 years was viewed as a mandate by Leech's successors at the Mint and those most concerned with coinage matters. Mint officials in 1915 clearly believed the law compelled them to act when time had run out on Barber's designs. Mint officials announced their intentions:

"Twenty-five years having nearly elapsed since the adoption of the present designs of half-dollar, quarter-dollar and one-dime pieces, under the law coins with new designs will have to be issued."

Indeed, the design changes beginning in 1907, continuing to 1913 and into 1916 are still regarded as the zenith of American coinage art.

Were our founding fathers with us today at this hearing—namely Washington and Jefferson—they would no doubt be amazed to find their portraits on our circulating coinage.

The trend toward presidential portraits being placed on U.S. circulating coins started with Lincoln in 1909. Numismatic historians tell us that sculptor Victor David Brenner suggested honoring the 100th anniversary of Lincoln's birth with a portrait to replace the Indian Head cent. President Theodore Roosevelt was so impressed with Brenner's work he personally commissioned Brenner to do the portrait.

With the precedent in place, it is not surprising to learn that Washington's portrait was placed on the quarter dollar to commemorate the 200th anniversary of his birth in 1932. As the Indian Head 5-cent coin reached its 25th year in circulation in 1938, Jefferson's portrait was placed on the obverse and his home, Monticello, was selected to grace the reverse of the five-cent coin.

When President Franklin D. Roosevelt died in 1945 the Winged Liberty Head dime had been in circulation for 29 years, so the dime was an immediate candidate for a Roosevelt portrait. Roosevelt—a victim of polio—was very much associated with the 10-cent coin because of March of Dimes campaigns in behalf of the Infantile Paralysis Fund, so public sentiment favored the change.

The Walking Liberty half dollar was in circulation for 31 years before being replaced in 1948 by a portrait of Benjamin Franklin. However, Franklin had been on the half dollar only 15 years when the young and popular John F. Kennedy was assassinated. An outpouring of public sentiment led President Johnson to ask Congress for special legislation to replace Franklin's portrait with that of his predecessor in 1964.

On December 31, 1970, President Nixon signed into law banking legislation containing an amendment calling for the reissuance of the dollar coin, specifying that it contain the likeness of the late President Dwight D. Eisenhower, whom he had served as vice president for eight years. The Eisenhower design on the dollar would last only eight years.

A study conducted by the North Carolina Research Triangle Institute on behalf of the Mint in 1976 identified the need for a small-sized dollar coin. After a long and bitter Congressional fight, feminist Susan B. Anthony's portrait was selected for the obverse of the new, small-size dollar coin. The small-dollar coin was minted for only three years—and for circulation, only two of those years—due to the public's rejection of it because of its size being confused with the quarter dollar. So effectively, no dollar coin is in general circulation today in the United States.

Most researchers and historians attribute both the executive and legislative branches' reluctance to embrace new circulating designs to political gridlock. Few are willing to speak out publicly in support of removing presidential portraits from our circulating coins, despite the overwhelming historical record supporting the desire and need to have our nation's coins reflect the ideals and aspirations of current generations.

Were they with us today, Mint Directors Kimball and Leech would surely be distressed to learn that our cent has not had an obverse design change for 82 years, our 5-cent coin design has been with us for 53 years, our 10-cent design for 45 years, our quarter dollar design for 59 years and our half dollar for 27 years. Except for the updating of the Lincoln reverse in 1959 and the brief 1976 Bicentennial reverse designs for our dollar, half dollar, and quarter dollar, designs of our circulating coins have been allowed to stagnate.

In view of this design stagnation, we must characterize the later half of the 20th century as a time of benign neglect when we examine the Mint's role in and responsibility for initiating new designs for our circulating coins.

Historically, the Mint's primary role has been to produce enough coinage to assure that the nation has an adequate supply for commerce. Implicit is the responsibility to ensure that the coin denominations are functional. Again, an examination of the record during the last decade shows a major failure. Instead of seeking ways to correct the Anthony dollar debacle of 1979, the Mint for more than a decade has chosen to ignore the need for a small-size dollar coin and the possible elimination of the cent. Consequently, the United States' circulating coins have the least purchasing power of any major nation in the world community. The United States should be on the leading edge when it comes to keeping its coinage modern, both in terms of design and usefulness to its citizens. Sadly, this is not the case today.

Congress has during the last decade greatly expanded the U.S. Mint's mission. Historically, the U.S. Mint was simply a manufacturer of coins, including the commemorative issues from 1892 until 1954. However, the Mint's role changed dramatically with the passage of legislation authorizing the 1983-84 Los Angeles Olympic Coin Program. For the first time in its history the U.S. Mint was charged with the responsibility for the sales and marketing of commemorative coins. That precedent has been carried forth in subsequent commemorative coin programs as well as the bullion coin programs, launched in 1986.

With the mandate to be a marketer as well as a manufacturer, the U.S. Mint occupies a possibly unique place in U.S. government. Because of its authorized monopoly in manufacturing and marketing of legal tender coins for sale to collectors and investors, the Mint has the ability to earn profits for the U.S. government. In addition, the Mint adds to the government's bottom line through seigniorage (the difference between the face value and the cost of production) of circulating coins, which for accounting purposes is used as a means of financing government debt. (When seigniorage increases, the amount the Treasury has to borrow decreases, and the government avoids paying the associated interest costs.)

We find it helpful to think of the U.S. Mint in terms of a manufacturing corporation. As such, the taxpayers of the United States would be its shareholders, Congress would be its corporate board and the Mint Director would be its CEO. In terms of sales volume and profits, the U.S. Mint has been likened to a Fortune 500 company.

Regrettably, Congress and the Mint's management have not bought into the term concept. For the past decade Congress has overindulged with intense micromanagement, mandating commemorative programs based on perceived needs to generate surcharges to fund special-interest projects. Congress appears to pay little attention to appropriateness of theme or marketability of the coins. The Mint's management throughout has behaved much like a sullen teenager, doing only what it is told it must do, without enthusiasm and seemingly devoid of any interest in becoming market-oriented. The result is a dramatic decline in U.S. commemorative and bullion coin sales. (See accompanying charts.) But of even greater concern is the fact foreign competitor Mints, realizing the potential of the vast U.S. market, are successfully gaining market share at the expense of the U.S. Mint. They are aggressively vying for U.S. coin collector dollars by marketing reasonably priced, historically significant, and aestically beautiful coins.

The approach of the U.S. Mint's bicentennial and the appointment of a new Director offer an unparalleled opportunity to revitalize the U.S. Mint and forge a new working relationship with Congress as well as the numismatic community. It is our understanding that major legislation intent upon reforming the Mint and equipping it to become market-oriented is now being drafted in the House of Representatives.

We believe that it is critical for the next Director to have the management expertise and the necessary vision to lead the U.S. Mint as it matures and is empowered to become a market-oriented entity. There is an implicit need for long-range planning and market sensitivity. Equally important will be the willingness to tap and use available expertise, whether in the public or private sectors. Candor and trust must be restored. Above all, the Mint must affirm its commitment to quality, in both terms of product and service to constituents as it enters its third century.

Mr. President, the second part of this amendment would require the Secretary of the Treasury to mint coins in commemoration of James Madison and the bicentennial of the Bill of Rights. Exactly 200 years ago, the Virginia Bill of Rights was ratified—and the first 10 amendments became part of our Constitution.

This amendment was originally introduced as S. 1672, with 55 cosponsors. It will ensure that we—the people—

have the opportunity to observe and learn about this great document, the Bill of Rights.

The amendment provides for broad public participation by establishing a nationwide open competition for the selection of the commemorative coin designs—a competition for the people. The Secretary of the Treasury will select the final coin designs from the competition.

Mr. President, this amendment is strongly supported by the numismatic community. The surcharge that is added to the price of these three commemorative coins will be less than the levels for previous coins. The high price of some commemorative coins raised concerns in the coin collecting community. The U.S. Mint indicated that lower surcharges as well as lower levels of mintage would make these commemorative coins more likely to sell out.

The surcharges from these commemorative coins will be used to help endow the education programs of the James Madison Fellowship Foundation. These programs are designed to strengthen teaching and study of the U.S. Constitution.

I urge adoption of this coin redesign and James Madison, Bill of Rights, amendment and the adoption of H.R. 3337, as thus amended.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 3337), as amended, was passed.

(The text of the measure as passed the Senate today will be printed in a future edition of the RECORD.)

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

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

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I yield to the distinguished chairman of the Banking Committee, the Senator from Michigan.

RESOLUTION TRUST CORPORATION REFINANCING ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. RIEGLE. Mr. President, I will take only a short amount of time. We are ready to vote on the RTC funding measure.

In reading the House bill, there was a provision that had been added on the House side that was not agreed to ahead of time by those of us in the Senate. That provision in question would have lowered the current capital standards for real estate construction loans on either single or multifamily housing.

We know from past experience that that would be a mistake to do. The House has agreed to take that out at the first moment they have the chance to do so when they reconvene. We have that assurance from the sponsor of the amendment, Mr. WYLIE from Ohio, and also the Speaker of the House has given us that assurance.

We are going to pass the RTC funding bill now in its present form. Upon the disposition of that vote, I will send a freestanding bill to the desk which will remove the section I referred to in there that was added on the House side. They will, at their first opportunity, pass that bill. And so that part of the bill will be stricken in that fashion.

I also have an assurance from the administration that they will not act to implement this in the interim period of time until this particular section can be removed.

Mr. DOMENICI. Mr. President, we agree on this side. We have a slightly different explanation. Actually, without the provision, the 8 percent will be reduced to 4 percent for residences that are pre-sold. That is very good for the housing market. If you leave the provision in, you are apt not to get it, because it will be contested internationally. We think it should come out.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill (H.R. 3435) was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Louisiana [Mr. BREAUX], the Senator from North Dakota [Mr. BURDICK], the Senator from Nebraska [Mr. EXON], the Senator from Iowa [Mr. HARKIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Nebraska [Mr. KERREY], the Senator from Wisconsin [Mr. KOHL], the Senator from Arkansas [Mr. PRYOR], the Senator from Illinois [Mr. SIMON], and the Senator from Colorado [Mr. WIRTH] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. BROWN], the Senator from Idaho [Mr. CRAIG], the Senator from Missouri [Mr. DANFORTH], the Senator from Utah [Mr. GARN], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Arizona [Mr. MCCAIN], the Senator from Delaware [Mr. ROTH], the Senator from Alaska [Mr. STEVENS], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

On this vote, the Senator from Arizona [Mr. MCCAIN] is paired with the Senator from Colorado [Mr. BROWN].

If present and voting, the Senator from Arizona would vote "yea" and the Senator from Colorado would vote "nay."

The result was announced—yeas 44, nays 33, as follows:

{Rollcall Vote No. 280 Leg.}

YEAS—44

Bentsen	Gore	Moynihan
Bingaman	Gorton	Nickles
Bond	Grassley	Pell
Boren	Hatch	Pressler
Bryan	Hatfield	Riegle
Bumpers	Inouye	Robb
Chafee	Kennedy	Rudman
Cochran	Levin	Sanford
Cohen	Lott	Sarbanes
Cranston	Lugar	Sasser
Dixon	Mack	Seymour
Dole	McConnell	Simpson
Domenici	Metzenbaum	Thurmond
Ford	Mikulski	Warner
Glenn	Mitchell	

NAYS—33

Adams	Dodd	Murkowski
Akaka	Durenberger	Nunn
Baucus	Fowler	Packwood
Bradley	Graham	Reid
Burns	Heflin	Rockefeller
Byrd	Hollings	Shelby
Coats	Kasten	Smith
Conrad	Kerry	Specter
D'Amato	Lautenberg	Wallop
Daschle	Leahy	Wellstone
DeConcini	Lieberman	Wofford

NOT VOTING—23

Biden	Gramm	McCain
Breaux	Harkin	Pryor
Brown	Helms	Roth
Burdick	Jeffords	Simon
Craig	Johnston	Stevens
Danforth	Kassebaum	Symms
Exon	Kerrey	Wirth
Garn	Kohl	

So the bill (H.R. 3435) was passed.

Mr. RIEGLE. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. If I could have the attention of the Senate, it is my understanding there will be no more votes today.

SENATE CONCURRENT RESOLUTION 84—CORRECTING THE ENROLLMENT OF H.R. 3435

Mr. RIEGLE. Mr. President, I am going to send to the desk a concurrent resolution, and also accompanying that, a separate bill to deal with the portion of the RTC legislation just passed that I referred to earlier. That is the part of the RTC bill that needs to come out, and we have asked and I have given the assurance to the Senate, based on representations by Mr. WYLIE in the House and by the Speaker of the House, that the House will delete

that provision at its earliest opportunity. That may be able to be done in terms of a correction to the enrollment of H.R. 3435.

So I now ask unanimous consent that the Senate proceed to the concurrent resolution, and then I am going to ask for its immediate adoption.

The PRESIDING OFFICER (Mr. CONRAD). The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 84) to correct the enrollment of H.R. 3435, the RTC funding bill.

The PRESIDING OFFICER. Is there objection to the request of Senator from Michigan?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, might I ask the distinguished chairman, I understand that a corrective matter that was requested by Senator MURKOWSKI, a definitional matter, was going to be included.

Mr. RIEGLE. Yes; that is right. And I suppose it ought to be included on both of them.

Mr. DOMENICI. I think that is right.

Mr. RIEGLE. I ask unanimous consent, then, that the Murkowski amendment be sent up to the desk and added to the motion that is now pending.

AMENDMENT NO. 1454

(Purpose: To clarify the definition of "property")

Mr. MURKOWSKI. I send an amendment to the desk and ask for its immediate consideration.

Mr. RIEGLE. Mr. President, I ask unanimous consent that it be modified to take account of the Murkowski amendment.

The PRESIDING OFFICER. If there is no objection, without objection, that will be the order.

Mr. RIEGLE. I yield back my time and move the passage of the amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 1454.

Mr. DOMENICI. 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:

SEC. . Subsection 12(b)(7)(vii) of Pub. L. No. 94-204, as amended, and subsection 9102(e) of Pub. L. No. 101-165, as amended, are each amended further by deleting in the appropriate place the phrase "real, personal," and substituting in lieu thereof the phrase "real, personal (including, but not limited to intangible assets such as financial instruments, notes, loans bonds, and licenses),".

SECTIONAL ANALYSIS

Both subsection 12(b)(7)(vii) of Pub. L. No. 94-204, as amended, and subsection 9102(e) of Pub. L. 101-165, as amended, contain an identical definition of "property" for the purpose of identifying those items available for purchase by the Cook Inlet Region, Inc. using the appropriated funds contained in the "Cook Inlet Region, Incorporated property account" established by the Secretary of the Treasury pursuant to section 12(b) of Pub. L. No. 94-204. Inasmuch as funds were appropriated to the property account in 1989 without fiscal year limitation, obligations from the property account will have no budgetary impact.

While the existing statutory definition of "property" appears to be all-inclusive, and includes the words ". . . real, personal, or mixed-owned . . .", some question has been raised as to whether the definition is broad enough to include purchases of intangible instruments, (e.g. Treasury Bills, RTC or FDIC paper, etc.). This amendment will clarify the all-inclusiveness of the original definition and ease CIRI's purchase of Government paper in addition to the already well accepted purchase of Government real property.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1454) was agreed to.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the concurrent resolution, as amended.

The concurrent resolution (S. Con. Res. 84), as amended, was agreed to.

(The text of the measure as passed the Senate today will be printed in a future edition of the RECORD.)

Mr. DOMENICI. Did the distinguished majority leader ask whether we had an understanding with the House regarding the Murkowski amendment?

We do not. I spoke with them regarding the basic amendment, which is curative. However, the Senator asked and we included it, and I assume that he will attempt to achieve it; and, if not, it would be dropped.

Mr. RIEGLE. I think we ought to have that understanding in there in light of the fact we have not been able to clear it on the House side.

Mr. DOMENICI. We did not clear it.

Mr. MURKOWSKI. It is my understanding, Mr. President, it will be in as part of the amendment.

Mr. RIEGLE. Yes; and it is acceptable to this side. But I am simply saying there is no understanding on the House side that they will be prepared to take it.

Mr. MURKOWSKI. I understand.

Mr. MITCHELL. Mr. President, just so there is no misunderstanding, I discussed the matter personally with the Speaker. At that time, I was unaware of any amendment by the Senator from Alaska. So the representation regarding the House's acceptance of this freestanding bill relates solely to the contents of the bill. And it is understood, then, by the Senator from Alaska, if we do not get this cleared on the House side, this amendment would be dropped from this bill because we do not want it to interfere with the acceptance by the House of this freestanding bill.

Mr. MURKOWSKI. I am wondering, Mr. President, what is the difference in the status of the technical amendment of the Senator from Alaska and the Domenici amendment.

Mr. DOMENICI. I did not put my amendment in. No; I did not.

Mr. RIEGLE. Does the Senator agree to that understanding so we move ahead?

Mr. MURKOWSKI. I agree. It is part of the amendment, recognizing the House obviously may make an adjustment to it. I did mention it to——

Mr. DOLE. They may drop it.

Mr. MITCHELL. Will the Senator agree under those circumstances just to two separate concurrent resolutions? Then this one is done. We have an agreement. The House and Senate is free to work separately on the other resolution to get the House to agree to it. We do not endanger this resolution, which has not been the subject of any discussion with anyone in the House.

Mr. MURKOWSKI. Mr. President, I respectfully remind the majority leader it was discussed on both sides, passed, and it was approved by the Energy Committee, both the minority and the majority. I briefly mentioned it to the majority leader, but I am sure he was distracted, but I mentioned it to both floor managers.

I will agree to have it go in as part of the amendment, recognizing the House may—it is so technical in nature. Perhaps in 5 seconds I can explain the amendment. The regional corporations in the State of Alaska—there are 12. One of them in particular, traditionally, had a right to buy all surplus property offered by the Federal Government under RTC. All we are asking in this technical amendment is that they may have the right to buy their debt instruments as well.

It is a very minor technical adjustment.

The Senator from Alaska agreed not to object previously with the understanding I would be able to offer it under this proposal. And I am going to abide by that.

This is a noncontroversial matter.

Mr. MITCHELL. Mr. President, I knew nothing about the amendment of the Senator from Alaska. And I take fully his word that it is noncontroversial.

That being the case, why does the Senator insist that it be added as an amendment to this measure, which we have already cleared with the House? They have accepted. I would be prepared to try to get the House to agree to his amendment separately. Just if he understands, if there is objection in the House to doing this, we are not going to permit the current underlying measure to be defeated because of this,

because it is important in terms of representations made on the RTC funding bill.

Mr. MURKOWSKI. The Senator from Alaska understands that. But I am not going, necessarily, to eliminate my amendment from this one and have it as a freestanding amendment.

Mr. SARBANES. Will the Senator yield? Is the Senator willing to do it both ways? Is the Senator willing to have a concurrent resolution without his amendment and to have one with his amendment? In that case, if there is no objection on the House side to the proposal of the Senator, that one can be taken. If there is, then the other one can be taken.

What has happened here, of course, is the representation was made to Members of the Senate when they voted on the RTC bill that what was perceived as a deficiency in the RTC bill would be corrected. On the basis of that representation, I think at least some Members, maybe many Members, voted for the legislation.

The problem is that the proposal, without the Senator's technical amendment, is what was cleared—without the Senator's amendment is what was cleared with the House.

We have no assurance, although one would hope so—it is being accepted on this side—that the House would not raise a problem. But you have no assurance on this score. Could we not do two resolutions, one that has the Senator's amendment in it and one that does not?

Mr. MURKOWSKI. In response to my friend from Maryland, I am afraid I just do not see the detraction, necessarily, from the standpoint of the discussion that we previously had that this would go on the amendment going over to the House. It is of such a technical nature it simply is a vehicle. The Senator from Alaska is very reluctant to separate it out at this time.

Mr. SARBANES. I understand that, but the fact of the matter is——

Mr. MURKOWSKI. If the House takes it out, I understand.

Mr. MITCHELL. Mr. President, if the Senator persists, just so there is no misunderstanding, if there is any objection to this in the House, this provision will be jettisoned because we have to get the underlying legislation done. If that is agreeable with the Senator, then I suggest we so proceed.

Mr. MURKOWSKI. That is agreeable with the Senator from Alaska.

Mr. DOMENICI. There is no question on our side. That is the only reason we gave it.

It is very technical, and there is a very good chance, if they look at it, they will take it, but if they do not—strip it off as deemed by the House—and we will have the bill passed.

Mr. MURKOWSKI. I thank the majority leader and the floor leaders.

Mr. RIEGLE. I will yield all time back. Can we act on this matter?

The PRESIDING OFFICER. The concurrent resolution has been adopted.

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

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

The motion to lay on the table was agreed to.

REPEALING SECTION 618 OF THE RTC ACT OF 1991

Mr. RIEGLE. I now send to the desk a bill, in the event that the correction just passed is not able to be adopted in the enrolling.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2131) to repeal section 618 of the Resolution Trust Corporation, Refinancing, Restructuring, and Improvement Act of 1991.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1455

Mr. REIGLE. Let me now send an amendment to it, a modification to it. I send an amendment 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 Michigan [Mr. RIEGLE], for Mr. MURKOWSKI, proposes an amendment numbered 1455.

Mr. DOMENICI. 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:

SEC. . Subsection 12(b)(7) of Pub. L. No. 94-204, as amended, and subsection 9102(e) of Pub. L. No. 101-165, as amended, are each further amended by deleting in the appropriate place the phrase "real, personal," and substituting in lieu thereof the phrase "real, personal (including, but not limited to intangible assets sold or offered by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation such as financial instruments, notes, loans, and bonds).".

Mr. RIEGLE. This bill is designed to correct, in bill form, the deficiency in the RTC legislation just enacted a few minutes ago. We are sending it forward in that form as well. I ask we now move on this issue.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1455) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there is no further amendment, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

(The text of the measure as passed the Senate today will be printed in a future edition of the RECORD.)

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, has the legislation been enacted?

The PRESIDING OFFICER. The majority leader is correct. It has been passed.

Mr. MITCHELL. Has the motion to reconsider been laid upon the table?

Mr. RIEGLE. I move to table the motion to reconsider.

The PRESIDING OFFICER. Without objection, the motion to lay on the table the motion to reconsider is agreed to.

MEDICAID VOLUNTARY CONTRIBUTION AND PROVIDER-SPECIFIC TAX AMENDMENTS OF 1991—CONFERENCE REPORT

Mr. MITCHELL. I submit a report of the committee of conference on H.R. 3595 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3595), 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; having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, 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 26, 1991.)

The PRESIDING OFFICER. If people could clear the Chamber who have no business in the Chamber?

Mr. DOLE. We yield back our time.

The PRESIDING OFFICER. Is there further debate on the conference report?

The Senator from Texas.

Mr. BENTSEN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BENTSEN. Mr. President, the Senate has now before it the conference report on H.R. 3595, the Medicaid moratorium amendments of 1991. I

supported the Senate amendment to the House bill, and I intend to support this conference agreement, albeit with reservations. This legislation is critical because it will stop from going into effect the administration's October 31 regulation relating to provider donations and taxes. If it were allowed to take effect, this regulation would be devastating to State Medicaid Programs and to the low-income pregnant women, children, elderly, and disabled individuals who rely on Medicaid for their health care needs. In my own State, for example, Texas Children's Hospital last year incurred $43 million uncompensated care costs. Failure to enact this conference report would have the effect of increasing substantially the amount of uncompensated care at this facility. The bill addresses the abuses in State revenue raising as identified by the inspector general. In addition, H.R. 3595 will give clear guidance to the States about what Medicaid financing mechanisms will be permitted, thereby facilitating long-term budget planning by public officials in each of the 50 States.

The Governors and the NGA staff, especially Ray Scheppach and Alicia Pelrine, deserve special recognition for their hard work in crafting the compromise with the administration which is the basis for this bill.

As I indicated earlier, however, I am concerned that this agreement may potentially affect legitimate longstanding financing arrangements by States and localities. Accordingly, I will monitor implementation closely and evaluate on an ongoing basis its impact on States, localities, providers, and beneficiaries through oversight hearings in the Finance Committee during the coming year.

I encourage my colleagues in the Senate to lend their support to this conference agreement.

Mr. President, the development of this complex bill was contentious, and grueling for the staff. I want to commend especially Janis Guerney, whose careful analysis and attention to detail was critical to reaching the final agreement. In addition, I want to thank Roy Ranthum with the Senate Finance Committee. Minority Chris Williams with Senator MITCHELL, Debbie Chang with Senator RIEGLE, and Mary Ella Payne with Senator ROCKEFELLER for their excellent work on behalf of the leader and the conferees. Alexander Polinsby with Senator DURENBERGER deserves special mention. While he is usually at Senator DURENBERGER's side on tax matters, his quick grasp of highly technical Medicaid provisions was as outstanding an example of the fine staff work as I have ever seen.

Finally Mark Merlis of the Congressional Research Service, Tom Streitz of the Office of Legislative Counsel, as well as Don Johnson and Daryl Grinstadt provided outstanding technical support during the development of the legislation and throughout the conference negotiations.

Mr. KOHL. Mr. President, I rise today to express my reservations with the conference report on H.R. 3595, the Medicaid Moratorium Amendments of 1991. My reservations are based on both the bill content and the process through which this legislation was developed.

I understand the fiscal difficulties facing the States, particularly with regard to burgeoning pressure on the Medicaid Program caused by unfunded mandates and increased need. The Medicaid system is in total disarray. But that being said, I am outraged by the ways in which some States have been gaming the Medicaid system. I am dismayed at the widespread willingness to funnel money around and expect a Federal match. The practice has been called a fraud and a scam. And it is. It is a highly communicable virus that has proliferated through the Nations' State capitols this past year and the National Governors Association/Health Care Financing Administration proposal is an antidote. I appreciate that.

My concern with the conference report content is twofold: it is a package of accomodations to various States and we have no idea how it will work. During Senate consideration of the NGA/HCFA compromise, deal after deal has been made for this State or that. It's not an unusual thing in the political process, but in this instance the deals were so vast and so numbered, that we can't even define what the real rules are. For example, I've asked about the transition rules. Explain to me the transition rules, I've said. The only way any one can explain them to me is to itemize all the exceptions to those rules. And that is telling, Mr. President.

In the midst of all the bargaining for exceptions, we lost track of some pretty important policy issues. One is the massive redistribution of Medicaid funds that I think will occur under this bill. Another is the issue of disproportionate share hospitals. It is a serious concern particularly for children's and inner city hospitals. It is a legitimate policy issue that we were not able to thoughtfully address during Senate consideration, despite the efforts of several of my colleagues. And I am pleased that the House Energy and Commerce Subcommittee chairman succeeded in creating a mechanism for some States to be allowed a higher cap in the fourth year. The colloquy between him and the chairman of the House Ways and Means Committee should serve to clarify that it is congressional intent that States retain flexibility with regard to the designation and reimbursement of disproportionate share hospitals. And the ProPac study called for in the legislation will help us to move forward on defining disproportionate share and establishing national ceilings.

Cost is another issue of concern to me. When I've looked for a comparative cost figure, I've been told the changes won't be scored and that it will not result in a sequester. My concern is for real costs and savings, not budget games. Does this cost more or less than the interim regulations, and what will the impact of each be on the people who are to be served by this program? And, under the moratorium that passed the House of Representatives, might we end up with even worse and more costly public policy? The President threatened to veto on that basis, and as a result the proposal never had a chance for serious discussion and debate.

Mr. President, there is also a problem with the process. I understand the timeliness of this issue and the impact that inaction would have on the majority of States. I want to praise the people who have worked around the clock for at least 4 days to present us with something that is doable before adjournment. They have done an incredibly fine job with a very difficult and technical proposal.

But frankly, the process that has brought us to this threshold is deeply disturbing. While I find myself in agreement with HCFA and OMB on the policy goal of stopping this raid on the Federal Treasury, how is it that we found ourselves presented with legislation that was marketed as a compromise between OMB/HCFA and the NGA? Despite the fact that hospitals, physicans, child advocates, States legislatures, counties and scores of other players in the health care arena will be dramatically affected by this plan, they were locked out of the policy debate. And to a great extent, so was Congress. Some Senators were just flatly given the impression that their concerns didn't matter because their governor has signed off already.

So here we are in the final hours of the session. We have a serious problem with the Medicaid Program, we have a consensus that the practice of gaming the system cannot be allowed to continue, and I believe, a consensus among the majority that implementation of the interim final regulations of January 1, 1992, would create chaos in both State budgets and the Medicaid system itself. We must pass this legislation. But we need not wholeheartedly endorse it. And I do not.

CONFERENCE REPORT ON THE MEDICAID VOLUNTARY AND PROVIDER TAX AMENDMENTS OF 1991

Mr. CRANSTON. Mr. President, I rise to voice my concerns with the conference report on H.R. 3595, the Medicaid Voluntary and Provider Tax Amendments of 1991 which the Senate passed today.

Although I did not oppose its passage, I have conerns with the con-

ference report which remain unresolved. This report fails to clarify that certain mandatory transfers from public hospitals to the State may be used as matching revenues and places an arbitrary cap of 12 percent on the amount States may provide hospitals that serve a disproportionate number of low-income patients. I understand that the conference report has slightly reformed this language, however, the cap has not been removed and a number of conditions have been attached.

Mr. President, I ask unanimous consent that my letter to the conferees be printed in the RECORD as follows:

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

U.S. SENATE,
Washington, DC, November 27, 1991.

DEAR CONFEREE: As you consider H.R. 3595, the Medicaid Voluntary and Provider Tax Amendments of 1991, I would like to express my concerns regarding certain provisions contained in the Senate-passed bill.

First, I am concerned with Section 2 which clarifies that certain State funds may be used for receiving matching grants. My concern is that California's proposed plan amendment which requires mandatory intergovernmental transfers from public hospitals will not be considered state funds that may be used properly for receiving matching grants. I urge the conferees to include language in the bill clarifying that state and local governmental entities are not prohibited from using revenues derived from legitimate sources as part of the state's share of Medicaid expenditures.

In a related matter, I am concerned with the provision in Section 2 which defines the term "health care provider" as "an individual or person that receives payments for the provision of health care items or services." It is not clear that states, local and other units of government are not "health care providers." Without clarifications, transfers from cities, counties and hospital districts may be considered as provider taxes which are limited under the bill.

I am concerned especially with a provision that places an arbitrary 12 percent national aggregate cap on the percent of funds that states may devote to payment adjustments for hospitals that serve a disproportionate number of low-income patients. I understand that the bill allows states above the cap to continue doing so, however, I am concerned that this cap was arbitrarily placed and the impact of such a cap is unclear. As you know, the OMB identified provider taxes as the source of Medicaid abuse. The bill provides for a 25% limitation on the use of provider tax revenues which sunsets in three years. I would ask the conferees to include a similar three-year sunset on the 12 percent cap on disproportionate share hospitals at which time Congress may review the impact of this cap and/or raise the cap to 15 percent.

I appreciate your consideration of my concerns.

Cordially,

ALAN CRANSTON.

The PRESIDING OFFICER. Is there further debate?

Mr. DOLE. Mr. President, I will take 30 seconds to thank the chairman of the committee, the Senator from West Virginia, Senator ROCKEFELLER, the Senator from Minnesota, Senator DURENBERGER, Gail Wilensky, members of our staff, and all the Nation's Governors, who have been helpful in working out this agreement. The chairman has properly outlined the problem. This is a very important piece of legislation we are passing, and I am glad it has come to this conclusion.

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

The conference report was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there be a period for morning business, with Senators permitted to speak therein.

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

SUBMISSION OF LEGISLATION TO AMEND THE TAXATION OF HOUSING COOPERATIVES

Mr. MOYNIHAN. Mr. President, I rise today to submit legislation designed to resolve the confusion surrounding the proper tax treatment of cooperative housing corporations.

The IRS has with mounting frequency been challenging the tax returns of housing cooperatives, particularly, low- to moderate-income cooperatives, which are a principal source of affordable housing in New York and many other areas of the country. The controversy concerns the cooperatives' treatment for tax purposes of various types of income, including interest earned on reserve funds maintained to provide for major repairs, net proceeds from laundry and parking facilities in the building and the like. The question is a bit arcane, but comes down to whether section 277 of the Internal Revenue Code applies to housing cooperatives, or not. If section 277 applies, then items like interest income from reserves may be fully taxable, rather than being eligible to be offset by the cooperative's expenses, such as operating costs and depreciation. The IRS has increasingly been taking the position that section 277 applies, and the result can be substantially increased tax liabilities for cooperatives.

Section 277 was enacted in 1969 and was designed to address the problem of membership organizations such as country clubs using the gains from transactions with nonmembers to defray part of the cost of providing goods and services to members, so that members receive them below cost. If a membership organization is allowed to consolidate its operations in this way, then the taxes due on the profits from transactions with nonmembers are avoided, and the members receive goods and services below cost that they would otherwise have to purchase with after-tax dollars.

Section 277 attempts to prevent this tax abuse by requiring that transactions with members and nonmembers be accounted for separately. Any deductions attributable to the furnishing of goods or services to members can only be taken against income from members; such deductions cannot be used against income from transactions with nonmembers.

Whether section 277 applies to a corporation operated on a cooperative basis has been a matter of some uncertainty and dispute, because there are other provisions of the Internal Revenue Code, grouped in subchapter T, which are specifically directed at cooperatives and also seek to deal with the problem of segregating member and nonmember transactions so that the latter do not cross-subsidize the former.

Which should apply to housing cooperatives, section 277 or subchapter T? How does one deal with the overlapping aspects of each? Should both apply? Even the IRS seemed to have trouble sorting this out—at least initially. The first set of proposed IRS regulations interpreting section 277, published in May 1972, included a section specifically addressed to the effect of section 277 on cooperatives subject to subchapter T, as follows: "Section 1.277-3 Interrelationship with cooperatives subject to the rules contained in subchapter T, chapter 1 of the Code. [Reserved]." By citing the issue in a section heading, and then "reserving" discussion on it, the IRS suggested that there was indeed an interpretative problem to be resolved, but postponed any resolution or guidance until some future date. That resolution never came, because the proposed regulations were later withdrawn in their entirely.

The issue has been litigated and a few court decisions have held that section 277 does apply to housing cooperatives (though in one case the taxpayer had conceded the issue). Some observers have also found persuasive the fact that committee report language accompanying a Senate Finance Committee-passed bill in 1976 asserted the drafters' understanding that section 277 applied to housing cooperatives. It was not until 1990, however, that the Internal Revenue Service published an official position on the matter, holding in Revenue Ruling 90-36 that section 277 applies to housing cooperatives.

Whether Revenue Ruling 90-36 is a correct statement of existing law could of course be left to the courts to resolve. It is my belief, however, the Congress should step in with affirmative legislation and settle the matter. Con-

gress could do so more expeditiously, and with the latitude to set sound policy here. My reasons for advocating a legislative solution are twofold.

First, I believe the result of applying section 277 to housing cooperatives is bad policy. To cite one result: if section 277 applies to housing cooperatives, then any interest earned on reserves for major repairs—whether set aside in compliance with law, or required by the lender, or merely as prudent management—would be fully taxable at the top corporate rate. This result would not comport with the general congressional policy with respect to housing cooperatives, which has been to put co-op unit owners in as near as possible the same tax position as homeowners who own their dwelling outright. For example, section 216 of the Internal Revenue Code allows co-op unit owners to deduct on their individual tax returns their proportionate share of the building's mortgage interest and real estate taxes.

It should not be surprising that section 277 produces odd results when applied to housing cooperatives because such cooperatives were not, I think it is fair to say, the principal focus of Congress when section 277 was enacted—if indeed housing co-ops were considered at all. Nor, for that matter, were housing cooperatives the principal focus when Congress enacted the provisions of subchapter T governing the taxation of cooperative organizations generally. I believe we need tax code provisions tailored to the particular circumstances of housing cooperatives, so that the policies applied are deliberate, not inadvertent.

The second reason I believe legislation is necessary concerns fairness to taxpayers. The language of section 277 and its legislative history are far from clear concerning housing cooperatives. As suggested earlier, the IRS's implementation of section 277 with respect to housing cooperatives has itself been a cause of uncertainty about the law. More recently, the IRS has stepped up auditing of housing cooperatives and, despite the uncertainty surrounding section 277 and the lack of official guidance until 1990, is asserting substantial liabilities for back taxes, interest and penalties. The cooperatives are resisting. Many of the cooperatives being challenged by the IRS provide low- and moderate-income housing, and are a significant contributor to the region's stock of affordable housing. I do not believe that it is in the best interests of the Government or the housing cooperatives to settle the section 277 question through protracted and expensive litigation. Not is it fair to subject co-op residents, who must bear the cost of any adverse judgment, to the uncertainty and financial risk of this course of action. Moreover, due to turnover, co-op residents who are required to pay off a judgment may not have owned units in the cooperative during the periods when the taxes were incurred. There is also a risk that many of the low- and moderate-income cooperatives—which maintain their affordability by organizing as "limited equity" cooperatives whose tenants agree to substantial restrictions on the resale prices of their units—will be forced to convert to "market rate" cooperatives in order to garner the funds to pay off an adverse tax judgment.

For all of these reasons, I am today introducing legislation designed to settle the matter once and for all—by setting aside section 277, and establishing a set of rules for housing cooperative taxation—under subchapter T of the Internal Revenue Code—that are clear, certain and fair. These clarifications of the general subchapter T rules for cooperatives are crafted specifically for housing cooperatives, both to insure clarity and to prevent abuses.

The bill that I introduce today would first clarify that section 277 is not intended to apply to a cooperative housing corporation—as defined in section 216 of the Internal Revenue Code. Instead, the provisions of subchapter T of the Internal Revenue Code will provide the rules for determining the appropriate taxation of certain types of income not directly received from tenant-shareholders. The legislation also clarifies and tightens the subchapter T rules, insofar as they apply to housing cooperatives, to make clear that there can be no setoff of losses related to the provision of housing against unrelated income.

The bill provides new rules under subchapter T, applicable to housing cooperatives, that deem the following to be patronage income—and therefore eligible for offset by losses related to the provision of housing—First, interest on reasonable reserves, and second, income from laundry and parking facilities to the extent attributable to use of the facilities by tenant-stockholders and their guests.

In addition, there is a special rule for "limited equity" housing cooperatives, which, generally speaking, are housing cooperatives which restrict the price at which a tenant-stockholder can resell his or her unit, in order to maintain the co-op unit prices at levels affordable to low- and moderate-income purchasers. The special rule for limited equity housing cooperatives permits rents received from commercial and professional tenants of the co-op building to be treated as patronage income.

Finally, the bill is not intended to affect in any way the tax treatment of any corporation operating on a cooperative basis which is not a housing cooperative. If modifications are necessary to make sure this intent is effectuated, such modifications will be made.

Mr. President, Congress is very close to adjourning this session, and I realize it will not be possible to take action on this bill in this session. But I anticipate that we will turn to tax measures early next year, and I hope that this legislation can be considered then.

Mr. President, I ask unanimous consent that the text of the legislation appear in the RECORD immediately after my statement.

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

S. —

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

SECTION 1. SECTION 277 NOT TO APPLY TO COOPERATIVE HOUSING CORPORATIONS.

Section 277(b) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a comma and "or", and by adding at the end thereof the following new paragraph:

"(5) which for the taxable year is a cooperative housing corporation described in section 216(b)(1) (determined without regard to section 143(k)(9)(E)).

SEC. 2. APPLICATION OF RULES RELATING TO TAX TREATMENT OF COOPERATIVES TO COOPERATIVE HOUSING CORPORATIONS.

(a) NONPATRONAGE EARNINGS OF COOPERATIVE HOUSING CORPORATIONS MAY NOT BE OFFSET BY PATRONAGE LOSSES.—Section 1388(j) of the Internal Revenue Code of 1986 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) PATRONAGE LOSSES MAY NOT OFFSET NONPATRONAGE EARNINGS.—In no event shall any patronage losses of an organization described in section 277(b)(5) be used to offset earnings which are not patronage earnings."

(b) PATRONAGE EARNINGS AND LOSSES OF COOPERATIVE HOUSING CORPORATIONS.—Section 1388(j)(5) of such Code (as redesignated by paragraph (1)) is amended to read as follows:

"(5) PATRONAGE EARNINGS OR LOSSES DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The terms 'patronage earnings' and 'patronage losses' mean earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

"(B) SPECIAL RULES FOR COOPERATIVE HOUSING CORPORATION.—In the case of a cooperative housing corporation, the following earnings shall be treated as patronage earnings:

"(i) Interest on reasonable reserves established in connection with the corporation, including reserves required by a governmental agency or lender.

"(ii) Income from laundry and parking facilities to the extent attributable to use of the facilities by tenant-stockholders and their guests.

"(iii) In the case of a limited equity cooperative housing corporation, rental income from other than tenant-stockholders to the extent attributable to any housing project operated by the corporation.

"(C) DEFINITIONS.—For purposes of subparagraph (B)—

"(i) COOPERATIVE HOUSING CORPORATION.—The term 'cooperative housing corporation' has the meaning given such term by section 216(b)(1) (without regard to section 143(k)(9)(E)).

"(ii) LIMITED EQUITY COOPERATIVE HOUSING CORPORATION.—The term 'limited equity co-

operative housing corporation' means a cooperative housing corporation with respect to which the requirements of clause (i) of section 143(k)(9)(D) are met at all times during the taxable year.

"(iii) TENANT-STOCKHOLDER.—The term 'tenant-stockholder' has the meaning given such term by section 216(b)(2)."

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall apply to taxable years beginning after the date of the enactment of this Act.

(b) ELECTION TO HAVE AMENDMENTS APPLY RETROACTIVELY.—Any corporation may elect to have the amendments made by this Act apply to any taxable year, whether beginning before, on, or after the date of the enactment of this Act, to which such amendments do not otherwise apply if the corporation was a cooperative housing corporation during such taxable year.

(c) NO INFERENCE.—Nothing in the provisions of this Act shall be construed as a change in the treatment of income derived by any cooperative housing corporation or any corporation operating on a cooperative basis under section 1381 of the Internal Revenue Code of 1986, and the treatment of such income for any year to which the amendments made by this Act does not apply shall be made as if this Act had not been enacted.

DEATH OF JAMES DENNIS O'CONNOR

Mr. DODD. Mr. President, I rise to say farewell to a close personal friend and a truly great man, James Dennis O'Connor, whose inspiring life, to my profound sorrow, ended on November 11 of this year.

As an attorney in Hartford, Jim brought integrity and nobility to the practice of law. As a superior court judge, he affirmed the durability and vitality of our system of justice and the principles and laws which sustain it. And as a friend, Jim touched the lives of all who were fortunate to know him with his sense of compassion, decency, understanding, and warmth.

It is very difficult for me to accurately express what Jim has meant to me and my family over the years, Mr. President. Jim O'Connor was not like a member of my family. He was a member of my family. His timeless qualities of integrity and sincerity allowed him to bridge the gap between generations, to be a friend to my parents and a friend to me, and my brothers and sisters.

To Jim's wife, Mary Ellen, and his six children, Dennis, Edward, Ellen, Martha, Joan, and Dorothea, I share their grief. I know Jim will be deeply missed. But I am equally sure his legacy will endure, and be a source of comfort.

Judge O'Connor's life began in Hartford in 1928, just before the onset of the Depression. The memory of those early years, when strife and human struggling was a common facet of everyday life, left him with a keen understanding of the value of justice and compassion. He learned early that we need laws that are wiser and better than ourselves, laws that will safeguard us from the vagaries of tyrants and the oppression of the powerful. Through every element of his career, Jim never lost sight of the basic premise that laws are for the benefit of people.

I remember one particular case in which a man was injured by three colliding cars while walking to work one morning. The man, who had lost part of his foot and was unable to work, brought suit against the insurance company of one of the drivers involved. Impatient with the dilatory tactics of the attorneys for the insurance company, Jim finally refused to hear the case another day without first requiring the company to make provisions for the man's family. No legal precedent compelled him to take such action, just a clear simple sense of fairness and justice.

Jim brought to his role on the bench not just an intuitive sense of justice, but a disciplined intellect, acquired at Hartford's Trinity College and the Georgetown University Law School.

He served his Nation with distinction as a naval officer during the Korean conflict.

Those of us who knew Jim O'Connor as a friend, a father, a husband, a counselor, and a brother, will miss him dearly. But far from being impoverished by his death, Mr. President, we are enriched by his life. Jim's character and integrity made each and every one of us a better person for having known him, and for that we will always be thankful.

REGARDING SECTION 8126 OF H.R. 2521, THE FISCAL YEAR 1992 DEFENSE APPROPRIATIONS BILL

Mr. STEVENS. Mr. President, last week Congress adopted the 1982 Defense appropriations bill conference report. Section 8126 of the bill provides a mechanism for Calista Corp., an Alaska Native corporation, to exchange valuable lands and land selection rights it has in national wildlife refuges for other surplus Government property.

Subsection 8126(a) provides that property—as defined in section 8133 of the 1991 Department of Defense Appropriations Act—which is not scheduled for sale prior to 1997, will be available for transfer at the request of the Secretary of the Interior for the purpose of entering into equal value property exchanges with Calista.

Calista owns lands, interests in lands, and entitlements to select additional Federal lands. In addition, through an agreement it has with certain village corporations to act as their agent in these land exchanges, it has the right to convey surface estate owned by the villages.

The provision enables Calista to enter into exchanges with the Secretary of the Interior to convey 210,000 acres of surface and subsurface lands and land entitlements identified in the Calista Conveyance and Relinquishment Document dated October 28, 1991.

Once the Secretary has identified property for exchange, the administering agency should ensure that the property is not wasted or transferred elsewhere. Furthermore, the administering agency should continue to hold and manage the property until title is conveyed, via an authorized exchange, to the Native corporation.

The Secretary has 9 months from the date of enactment to conduct appraisals of the land and interests in land identified in the conveyance document. If disagreements with Calista arise regarding the valuation of the lands package, they may be resolved through the processes established by the 1988 Federal Land Exchange facilitation Act.

For fiscal reasons, this provision includes a cap on the maximum average value per acre of $300 for the entire package of lands identified in the Conveyance and Relinquishment Document, dated October 28, 1991. However, according to a recently conducted appraisal, certain tracts of Calista's lands—including entitlement—possess values substantially greater than $300 per acre. The $300 cap is intended to provide an upper limit on the average value per acre that the Secretary may assign to the entire lands package as he appraises the values of individual tracts.

In making the determination, the Secretary is to use, first the fair market value of the lands using the Uniform Appraisals Standards; second, public interest values, and third, comparable acquisitions and exchanges authorized or mandated by law.

The Uniform Appraisal Standards for Federal Land Acquisitions have been revised recently and are expected to be republished some time in the near future. Federal Government appraisers traditionally have relied on this document in their efforts to determine the fair market value of property. In the past, however, when Federal land acquisition appraisers have attempted in-house to value remote lands and interest in lands within the boundaries of conservation system units in Alaska, these Uniform Appraisal Standards have proven to be inadequate.

The problem arises because, among other factors, the standards deal only with a traditional market or income approach to valuation. In addition the process provides considerable latitude to exclude comparable sales as being not comparable and fails to give proper weight and consideration to public interest values of land and statutorily mandated or authorized exchanges and acquisition of land. Public interest values are distinct from commercial value, such as the value of timber or minerals for economic use, or values

ascribed to land which can be developed for housing or municipal facilities. For example, while certain lands may have little value in the traditional economic sense, they may have great value as critical habitat for endangered or threatened species or as nesting grounds for plummeting waterfowl populations.

Consequently, in 1976, Congress reinforced a statutory direction regarding public interest values and authorized and directed Federal agencies to consider public interest values in land exchanges and acquisitions. In other land exchanges and land valuations authorized or mandated by law since then—most recently in the Superfund law—The Congress has expressed the view that there are clearly other public values to be considered in such exchanges. It is the intent of this property exchange provision that these other values be properly factored into the appraisals of the lands and interests in lands involved in the Calista land exchange.

Public interest values include, but are not limited to, conservation, biological, environmental, cultural, historical, archaeological, user and other values of land located within national wildlife refuge boundaries in Alaska. Such values contribute toward making the lands of national significance.

The land and interests in lands offered for exchange by Calista located within the Yukon Delta National Wildlife Refuge will, by operation of law, become part of that refuge once they are transferred to the Secretary of the Interior. The lands within the refuge, including Calista's lands, were deemed by Congress through the Alaska National Interest Lands Conservation Act to be national interest lands worthy of being set aside for their intrinsic value as a national wildlife refuge. The national interest nature of the Calista lands and their public interest values should be given appropriate weight in the appraisal process.

In addition, the Secretary is required to consider as comparables other exchanges authorized or mandated by law between the Federal Government and private parties and acquisition of lands and interests in lands by the Federal Government in Alaska, including acquisitions of lands from Native corporations. The Secretary is expected to rely on professional appraisals which utilize the factors required to be considered in section 8126.

Section 8126 also provides that properties conveyed by the United States under this section be treated as conveyances of land entitlement under 43 U.S.C. 1601–162 except for several subsections. Because of concerns expressed by the House Ways and Means Committee, the tax provisions in 43 U.S.C. 1620, 1627, and 1636 were excepted.

Mr. President, I ask unanimous consent to insert in the RECORD at the conclusion of my remarks an analysis of section 8126, the Calista Conveyance and Relinquishment Document dated October 28, 1991, which the legislation references, a letter from Mr. Robert D. Reischauer, Director, Congressional Budget Office.

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

SECTION 8126 ANALYSIS

Section 8126(a). This subsection identifies the property of the U.S. Government which is authorized to be made available for exchange between the Secretary of the Interior and the Calista Corporation once certain terms and conditions are met. Such property is defined in Section 8133 of the Department of Defense Appropriations Act for Fiscal Year 1991 (104 Stat. 1909). The lands, interests in lands and entitlements to lands to be exchanged are identified in "The Calista Conveyance and Relinguishment Document,' dated October 28, 1991. The subsection also provides that the Secretary of the Interior will determine the value of those lands no later than nine months after the enactment date. In determining the value of the Calista lands, the Secretary is required to consider the "Uniform Appraisal Standards for Federal Land Acquisitions," the public interest values of the lands and interests in lands, and previously authorized or mandated exchanges with or acquisitions of lands and interest in lands in Alaska by the Federal government. The process outlined in the 1988 Federal Land Exchange Facilitation Act will be used to resolve any disagreements regarding the valuation of the land package. The subsection also provides that the average per acre value of the lands and interests in lands is not to exceed $300. It also provides the property exchanged with Calista is to be treated the same as property conveyed to other Native corporations under 43 U.S.C. 1601–1642 (except for subsections 1620(a)–(c), (f)–(j); subsection 1627(b) and 1636(d)).

(b). This subsection provides that property held for sale by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation may not be transferred to the Secretary for purposes of an exchange until after October 1, 1996.

(c). This subsection directs the Secretary of the Interior to maintain an accounting record of the value of the lands and interests in lands available to be conveyed by the Calista Corporation. The Secretary is directed to establish a property account on October 1, 1996, with an initial balance equal to the value of the lands and interests in lands that the Calista Corporation has not, at that time, conveyed or relinguished to the U.S. Government. Whatever amounts remaining on that date could be used to acquire by exchange or purchase property identified in Subsection 9102(a)(2) of the Department of Defense Appropriation Act 1990 (103 Stat. 1151).

THE CALISTA CONVEYANCE AND RELINQUISHMENT DOCUMENT, OCTOBER 28, 1991—LANDS, INTERESTS IN LANDS, AND ENTITLEMENTS TO LANDS TO BE CONVEYED RELINQUISHED TO THE U.S. GOVERNMENT

OVERVIEW

The purpose of this document is to identify the lands, interests in lands, and entitlements to lands which are to be exchanged, pursuant to an agreement with the Calista Corporation, for properties of equal value held by the U.S. Government.

The general areas and acreages (210,355 total acres) involved in the exchange are as follows (see enclosed Map #1): Hamilton—8,000 acres of surface and subsurface lands; Dall Lake—10,000 acres of surface and subsurface lands; Tuluksak River Drainage—5,600 acres of subsurface lands; Hooper Bay—27,074 acres of subsurface lands; Scammon Bay—88,507 acres of subsurface lands; Kusilvak—61,174 acres of subsurface lands; Calista 14(h)(8) entitlements—10,000 acres of full fee entitlements (surface and subsurface) to Federal lands.

The acquisition by the U.S. Government of Native inholdings (lands and interests in lands) and land selection entitlements comprising this exchange will provide significant legal rights to the Federal government, which will in turn, enhance the protections afforded to the Yukon Delta National Wildlife Refuge, Alaska. It will help reduce the potential for adverse development of surface and subsurface lands within the boundaries of the Refuge. It will permit public access to surface estates which are not presently permitted. It will reduce future losses of Refuge lands to underselected Native Corporations. It will eliminate the potential disturbance of the surface lands, and their values from development of the subsurface estate. It will provide cost savings to the Bureau of Land Management in avoided conveyance and survey activity which would otherwise take place, and to the Fish and Wildlife Service in managing these inholdings.

The importance of this world class waterfowl habitat is demonstrated by the fact that part of this area was one of the first National Wildlife Refuges in the Nation: President Theodore Roosevelt set aside the first wildlife reserve in the Yukon-Kuskokwim Delta in 1909, in recognition of the value and importance of the land to migratory birds, especially waterfowl. Additional areas were added over the years and, in 1980, Congress combined and enlarged the existing wildlife ranges and refuges to establish the Yukon Delta National Wildlife Refuge.

While the Refuge has moderate populations of mammals, including small furbearers, moose, caribou, and recently re-established musk-ox, the primary wildlife resource is the enormous populations of ducks, geese, swans, shorebirds, and water birds that nest on the Delta. An estimated 100 million waterfowl, shorebirds, and sea birds representing over 50 species use the Delta for nesting and for resting and feeding during migration. A large percentage of the migrating birds of the Pacific Flyway originate from the Yukon Delta.

The importance of the Delta as nesting grounds for North American waterfowl increases yearly as productive prairie pothole nesting habitats in the United States and Canada are drained for agriculture or are lost to drought.

DESCRIPTION OF THE LANDS, INTEREST IN LANDS, AND ENTITLEMENTS TO LAND TO BE CONVEYED

Hamilton/Yukon Delta area—8,000 acres

Location

The Hamilton parcel is located near the delta complex at the mouth of the Yukon River between Apoon Pass and Nanvaranak Slough. It is approximately 20 miles south of Norton Sound.

General description

The Hamilton parcel consists of 8,000 acres of combined surface and subsurface estate. The lands are part of the wet muskeg coastal plain with slough, lake and pond habitats. Several small sloughs head in the parcel and

dozens of small lakes and ponds and their adjacent marshes and wetlands are scattered throughout the parcel. Most of the land is less than 20 feet above sea level and the dwarf tundra vegetation is underlain by sand and silty flood plain material. The southern part of the parcel contains some areas of deciduous shrub land and has more extensive grassy marshlands and riverine habitats. The parcel is five miles south of the Yukon River Delta unit of the historic Clarence Rhode Wildlife Range and the abandoned Village of Hamilton.

Refuge values

The chief habitat and wildlife value of the parcel is waterfowl nesting. The parcel is contiguous to coastal plain habitat to the north and west, and is used by geese, swans, sandhill cranes, ducks, loons, and numerous shorebirds, including curlews, sandpipers, and plovers. Maps of species distribution by density blocks, produced by U.S. Fish and Wildlife, show the area to have medium range densities for pintail ducks, scaup, and tundra swans: one to four birds per square mile, and up to one per square mile densities for Canada geese, arctic loons, and sandhill cranes. Other nesting birds include white-fronted geese, scoters, shovellers, and mallards. Shorebirds of several species are common to abundant. Whitefish, sheefish (inconnu), and northern pike are common in the sloughs and larger lakes. Furbearers such as mink, otter, muskrat, beaver, Arctic and red fox are abundant, but large mammals are rare due to the lack of protective cover.

Hamilton subsurface

The subsurface beneath the Hamilton surface lands is part of the Yukon Delta/Norton Sound Sedimentary Basin. Calista leased the Yukon Delta subsurface lands to Amoco Exploration in 1978. These lands have also had several generations of seismic survey work since the early 1970's and the area continues to receive oil industry attention.

Hamilton parcel land description

Seward Meridian, Alaska, (Unsurveyed).

T. 31 Fl R. 77 W.—Secs. 29 and 30.

T. 31., R. 78 W.—Secs. 1, 2, 11, 12, 13, 14, 23, 24, and 25.

T. 32 N., R. 78 W.—Sec. 35 (fractional); Sec. 36.

Dall Lake Area—10,000 acres

Location

The Dall Lake parcel is located along the southeastern border of Dall Lake southeast of Bethel, Alaska, about 30 miles from Bering Sea waters of Etolin Strait. It borders the eastern boundary of the Nelson Island unit of the Clarence Rhode National Wildlife Range.

General description

The Dall Lake parcel is a surface and subsurface selection of approximately 10,000 acres. The parcel is 12 miles across and extends about eight miles northeasterly into Dall Lake along a series of peninsulas and islands. This parcel consists of low elevation wetlands and islands dotted with innumerable lakes and ponds along the southeastern border of Dall Lake, an extremely large inland lake covering more than 150 square miles. Wet muskeg tundra vegetation and sedge meadow islands and lake margins characterize the habitat at Dall Lake.

Refuge values

The Dall Lake parcel lies within the Yukon-Kuskokwim lowlands unit of the Yukon Delta NWR. This unit is largely wetlands, habitat for a diversity of fish and wildlife including geese, ducks, swans, shorebirds, moose, caribou, many species of furbearers, ptarmigan, and many other bird and mammal species.

The area is an important producer of ducks and is significant as a staging area for thousands of snow geese migrating to and from their nesting grounds on Wrangell Island in the Soviet Far East. U.S. Fish & Wildlife Service has indicated high scaup nesting densities of four to 12 birds per square mile, and pintail and scoter densities of one to four per square mile in the area. Also occurring at densities of one to four birds per square mile are tundra swans, Canada geese, arctic loons, and sandhill cranes. Other species noted in aerial surveys within the parcel area were red-throated loons, white-fronted geese, oldsquaw ducks, and mallards. Both shorebirds and ptarmigan are common in the area.

Approximately 30 musk oxen use the Dall Lake area year around. These musk oxen are part of the growing 100-head mainland herd established on Nelson Island which is currently expanding its range to inland parts of the refuge. Furbearers such as mink, otter, muskrat, and red fox are common in the Dall Lake area and are important subsistence resources. The lakes and waterways contain resident Arctic char, whitefish, northern pike, cisco, and burbot, all used by villagers for subsistence.

Subsurface values

The subsurface beneath the Dall Lake surface lands is in the central portion of the Bethel/Kuskokwim Delta Sedimentary Basin. Calista leased the Bethel Basin lands to Shell Exploration in 1974. Like the Yukon Delta area, these lands have had several generations of seismic survey work since the early 1970's and the area continues to receive oil industry attention. In 1962 a single test well was placed on the flank of what is now defined as the Bethel Basin. In the future it is likely that this sedimentary basin, which is nearly the size of Oklahoma, will receive more exploration.

Dall Lake parcel land description

Seward Meridian, Alaska Unsurveyed.

T. 1 N., R. 82 W.—Secs. 23 to 36, inclusive.

T. 2 N., R. 82 W.—Secs. 6, 7, 18, 19, 20, 21, and 30.

T. 1 N., R. 83 W.—Secs. 2 through 36, inclusive.

T. 2 N., R. 83 W.—Secs. 25 through 35, inclusive.

Tuluksak River Drainage—5,600 acres

Location

The Tuluksak River parcel is located within the eastern border of the Yukon Delta National Wildlife Refuge and extends four miles into the refuge on both sides of the Tuluksak River.

General Description

The Tuluksak River parcel is a subsurface selection of 5,600 acres within the Yukon Delta National Wildlife Refuge. The surface is owned by the U.S. Government. It is the downstream extension of a large gold mineralized placer mining district at Nyac, Alaska. Approximately 10 federal placer mining claims are located within the parcel and the subsurface selection was made on the basis of its mineral potential. The nearest tailings are one mile upstream from the eastern boundary of the parcel. The parcel is located at the point where the Tuluksak River leaves the Kuskokwim Mountain range and flows across the subdued topography of the delta plain toward the Kuskokwim River. The river valley is 250 to 300 feet in elevation, and elevations rise to approximately 900 feet on the perimeter of the parcel. The vegetation consists of mixed white spruce, birch, and poplar forests, with willows and alder along the river and tundra vegetation on the upland benches.

Refuge Values

The Tuluksak River parcel is part of the Kilbuck Mountains unit of the Yukon Delta NWR. This unit is characterized by mountains with narrow deep valleys and small canyons, rock outcrops and bluffs along the rivers and streams, a pattern of tundra and upland habitats, and a number of lakes. The only rainbow trout fisheries identified in refuge waters are found in the major rivers draining the Kilbucks. The unit also contains excellent raptor habitats with gyrfalcons, rough-legged hawks, and golden eagles among the most common nesting species. Large mammals found in the unit include moose, caribou, black and grizzly bear, wolves, and wolverines.

The north bank of the river has two rock bluffs that are suitable raptor nesting habitat. The Nyac area has documented nesting of golden eagles, goshawks, gyrfalcon, merlin, and great horned owls (BLM Open File Report, 1980; Technical Report 8, 1983). Raptors use the river valley for hunting and brood rearing. Both spruce grouse and willow ptarmigan occur here.

The Tuluksak River valley has excellent populations of mammals. Alder and willow have grown up around old mining areas and support increased populations of snowshoe hares, fox, moose, and bear. Beaver have colonized the dredge ponds and are abundant throughout the valley. Presently, 12 radio-collared moose are being monitored as part of an ongoing population study project in the Tuluksak River valley.

The Tuluksak River runs for four miles through the length of the parcel. It is a clear running river and is an anadromous salmon spawning area within the parcel boundaries. Chinook, chum, and coho salmon plus grayling, Dolly Varden/Arctic char, and rainbow trout are present in the river and the area has been the subject of BLM fisheries enhancement projects.

Subsurface Values

This parcel, which has significant gold reserves, includes 5,400 acres of Calista subsurface lands underlying YDNWR surface lands and 200 acres of patentable Federal Placer Mining Claims within the YDNWR.

The Tuluksak In Lieu selections include a major placer gold deposit which will be dredge-mined in the near future. Plans for the extraction of the gold reserves in this area are in the advanced stages. While this dredge mining can and must be conducted in a manner consistent with all environmental regulations, some degradation of the habitat is inevitable. Federal acquisition of these mineral-rich lands will remove the threat of potential adverse environmental impacts on the area from gold mining and eliminate the refuge-versus-development conflict inherent in the split estate. It is significant to note that these are the only remaining Federal Placer Claims in the YDNWR. Mining activities on the Tuluksak River have been identified in the YDNWR Plan as a major threat to the water quality of the refuge.

This parcel contains 13 Federal Placer Claims totaling over 200 acres. Federal acquisition of these claims totally removes this threat of mining within the refuge.

Tuluksak Parcel Land Description, Seward Meridian, Alaska Unsurveyed.

T. 10 N., R. 61 W.—Secs. 7 and 8; Secs. 16, 17, and 18.

T. 10 N., R. 62 W.—Sec. 11; Sec. 12 excluding Native Allotment FF-17230; Secs. 13 and 14.

Hooper Bay Area—27,074 acres

Location

The Hooper Bay parcel is located on Dall Point with Kokechik Bay on the north and Hooper Bay on the south and the Bering Sea to the west. It is adjacent to the Clarence Rhode National Wildlife Range unit of the Yukon Delta National Wildlife Refuge on its eastern border.

General Description

The Hooper Bay parcel consists of subsurface estate. The surface is owned by Sea Lion Corporation and is not part of this conveyance. The parcel is coastal plain with innumerable small ponds and lakes and several small sloughs. Most of the parcel is below 50 feet in elevation. Longshore sand spits form northern extensions of the land, and dunes form Dall Point itself. The village of Hooper Bay is located at the mouth of Napareayak Slough on Hooper Bay.

Refuge Values

The Kokechik Bay frontage of this parcel has some of the highest value habitat rankings on the Yukon Wildlife Delta. These lands are biologically productive, tide-influenced marshlands critical to the artic nesting geese species. High densities of nesting emperor, whitefronted, and cackling Canada geese utilize this rich marshland, and it is also important for nesting swans, cranes, ducks, loons and abundant numbers of several species of shorebirds. Northern pintails in the coastal zone occur at three times the density that they occur in the interior delta, averaging four to 12 per square mile in F&WS aerial surveys. Scaup also occur in these densities and other ducks such as oldsquaw, spectacled and common eider, scoters, shovellers, and mallards also utilize the habitat. The mudflats and sand spits in both bays are vital feeding and staging areas for vast numbers of migrating waterfowl and shorebirds. The largest breeding colony of Brant geese on the refuge is located on the south shore of Kokechik Bay.

Subsurface Values

These lands have been subject to oil and gas leases twice in the recent past. The geology is permissive of several mineral deposit types—however, there are no known occurrences of minerals in this poorly explored region.

Hooper Bay Parcel Land Description

Interim conveyance No. 511: Seward Meridian, Alaska (Unsurveyed).

T. 17 N., R. 93 W:

Secs. 1 to 4, inclusive;

Secs. 5 and 8 (fractional);

Secs. 9 to 14, inclusive;

Secs. 15 and 16;

Secs. 17, 18, and 20 (fractional);

Secs. 21, 22, and 23;

Sec. 24, excluding Native allotment F-14703 Parcel C;

Sec. 25 (fractional), excluding Native allotments F-13207 and F-19116 Parcel A;

Sec. 26, excluding U.S. Survey No. 2026, U.S. Survey No. 4052, and U.S. Survey No. 4420;

Sec. 27, excluding U.S. Survey No. 4420 and U.S. Survey No. 3774;

Sec. 28, excluding U.S. Survey No. 3774;

Sec. 29 (fractional);

Sec. 32 (fractional), that portion outside Public Land Order 2213;

Sec. 35 (fractional), excluding U.S. Survey No. 4420.

T. 18 N., R. 93 W:

Secs. 4 and 9 (fractional);

Secs. 11 to 16 (fractional), inclusive;

Secs. 21 and 22 (fractional);

Secs. 23 to 27, inclusive;

Secs. 28 and 33 (fractional);

Secs. 34, 35, and 36.

T.16 N. R. 94 W

Secs. 1, 2, and 3 (fractional);

Sec. 4 (fractional), that portion outside Public Land Order 2213 excluding U.S. Survey No. 3774;

Secs. 10, 11, and 12 (fractional), those portions outside Public Land Order 2213.

Interim conveyance No. 579: Seward Meridian, Alaska (Unsurveyed)

T. 17 N. R. 93 W.

Sec. 33 (fractional) that portion outside Public Land Order 2213, excluding U.S. Survey No. 3774;

Sec. 34, excluding U.S. Survey No. 3774 and U.S. Survey No. 4420.

Scammon Bay—88,507 Acres

Location

The Scammon Bay parcel is located on the Bering Sea coast at Scammon Bay on the Yukon-Kuskokwim Delta.

General Description

The Scammon Bay parcel is a large tract (25 miles long by up to 12 miles across) of subsurface estate, whose surface estate is privately owned by Askinuk Corporation, the Native corporation of Scammon Bay village and not involved in this conveyance. The parcel includes 80,420 acres of conveyed subsurface estate and 8,087 acres of remaining subsurface entitlements at Scammon Bay. The parcel includes about 20 miles of Bering Sea coastline.

The surface overlying this subsurface parcel consists of several distinct habitats. There is a prominent, rocky, mountainous upland to the south which is used by upland ground-nesting birds such as ptarmigan, rock sandpipers, golden and semi-palmated plovers, short-eared owls, and jaegers. Steep rocky bluffs, fast, clear streams, and small sheltered bays characterize the parcel's 14 miles of Bering Sea shoreline on the southern shore of the bay. The mountains rise to an elevation of 1,465 feet within the parcel. The intrusive volcanic rock that forms the mountains is useful as quarry material and is currently being extracted for an airport improvement project at the village of Scammon Bay. The southern border of the parcel is adjacent to the Kokechik Bay/Paimuit unit of the Clarence Rhode National Wildlife Range which has some of the most significant habitat values on the Yukon-Kuskokwim Delta National Wildlife Refuge due to its intensive use by arctic nesting geese species.

To the north, the overlying habitat is a flat coastal plain utilized by arctic nesting geese such as the endangered white-fronted, emperor, and cackling Canada geese. The coastal plain is dissected by the large, shallow meanders of the Kun River and several small tributaries including the Kikneak and Ear Rivers. Habitats includes tidal sloughts and estuaries, beach ridges and swales, lake and pond shores, and sedge meadows important to nesting and brood-rearing.

Refuge Values

The Scammon Bay parcel is located in the delta coastal plain unit of the Yukon Delta NWR. The dominant feature of this unit is vast wetlands characterized by thousands of thaw lakes and ponds underlain by permafrost. The freeze-thaw cycle coupled with regular tidal and riverine flooding maintain a herbaceous wetland that is excellent waterfowl habitat. It is considered the best goose-brant nesting area in North America. Historically, one half of the continental populations of brant nested on the coastal fringe, as do nearly the entire populations of cackling Canada and emperor geese. Most of the Pacific flyway population of white-fronted geese also nest here. In addition to cackling Canada geese, two other subspecies of Canada geese—both Taverner's and lesser Canada geese—are also found within this unit. The three subspecies appear to favor slightly different zones with cacklers nesting in a ten mile wide band closest to the sea, Taverner's moving inland slightly, and lessers somewhat more inland. These zones, however, do overlap. The area is also considered part of the largest and most important shorebird habitat in the Pacific Flyway. It is the largest single expanse of intertidal habitat in North or South America, and provides the major breeding grounds for North American populations of black turnstone, dunlin, western sandpiper, rock sandpiper, and bar-tailed godwit, as well as being an important staging area for bristle-thighed curlews.

The periodic flooding of the tidal marshes of the coastal plain creates a rich food source for nesting and rearing young and contributes to goose, swan, and crane densities of one to 12 per square mile, with heaviest nesting densities along the coast (US Fish & Wildlife aerial surveys). Pintail and scaup (four to 12 per square mile), scoter (one to four per square mile), oldsquaw, spectacled eiders, loons (up to 12 per square mile), and shorebirds also nest on the coastal plain. Mink, otter, muskrat, beaver, and Arctic and red fox are common to abundant.

Subsurface Values

These lands have been subject to oil and gas leases twice in the recent past. The geology is permissive of several mineral deposit types—however, little is known of the occurrence of minerals in this poorly explored region. The value of the subsurface in the Scammon Bay is based to a large extent on the ready supply of sand, gravel and rock. This area is the only local source for these materials in a region where such materials are scarce and costly.

Scammon Bay Parcel Land Description

Interim conveyance No. 573: Seward Meridian, Alaska (Unsurveyed)

T. 20 N., R. 88 W:

Secs. 5 and 6;

Secs. 7 and 8, excluding Native allotment F-19234;

Sec. 18, excluding Native allotment F-19228 Parcel A;

Secs. 19, 20, 26, and 27;

Secs. 28 and 29, excluding Native allotment F-15947;

Secs. 30 and 35.

T. 21 N., R. 88 W:

Secs. 9 to 16, inclusive;

Secs. 21 to 31, inclusive;

Sec. 32, excluding Native allotment F-19043 Parcel B;

Sec. 33, excluding Native allotment F-19229 Parcel A;

Sec. 34, excluding Native allotment F-18977 Parcel B;

Secs. 35 and 36.

T. 20 N., R. 89 W:

Secs. 1 to 6, inclusive;

Secs. 7 and 8, excluding Native allotment F-19233;

Sec. 9;

Sec. 10, excluding Native allotment F-19045;

Secs. 11 to 16, inclusive;

Secs. 17 and 18, excluding Native allotment F-19233;

Sec. 19;
Sec. 20, excluding Native allotment F-19231 Parcel B;
Sec. 21;
Sec. 22, excluding Native allotment F-19043 Parcel A;
Sec. 23, excluding Native allotment F-19241;
Secs. 24 to 28, inclusive;
Sec. 29, excluding Native allotment F-19231 Parcel B;
Secs. 30, 31, and 32.
T. 21 N., R. 89 W:
Secs. 5 to 10, inclusive;
Secs. 15 to 18, inclusive;
Sec. 19 (fractional);
Secs. 20 to 23, inclusive;
Secs. 25 to 28, inclusive;
Secs. 29 and 30 (fractional);
Secs. 32 and 33 (fractional);
Secs. 34, 35, and 36.
T. 20 N., R. 90 W:
Secs. 1 and 2;
Sec. 3, excluding townsite petition application F-391;
Sec. 4 (fractional), excluding townsite petition application F-391;
Secs. 7 and 8 (fractional);
Sec. 9 (fractional), excluding townsite petition application F-391;
Secs. 12 to 30, inclusive;
Sec. 31, excluding Native allotment F-14759 Parcel C;
Secs. 32 to 36, inclusive.
T. 20 N., R. 91 W:
Sec. 11 (fractional), excluding Native allotment F-19041;
Sec. 12 (fractional);
Sec. 13;
Sec. 14, excluding Native allotment F-19223 Parcel B;
Sec. 15 (fractional);
Sec. 16 (fractional), excluding Native allotment F-19039 Parcel B;
Secs. 17 and 18 (fractional);
Secs. 19 and 20;
Sec. 21 (fractional), excluding Native allotments F-15023 Parcel A and F-19224;
Sec. 22 (fractional), excluding Native allotment F-19224.
T.20 N., R. 92 W:
Sec. 13 (fractional), excluding Native allotments F-19033 Parcel A and F-19044 Parcel B;
Sec. 14 (fractional), excluding Native allotments F-19039 Parcel A, F-19056 Parcel A, and F-19221 Parcel B;
Secs. 23 and 24.

Interim Conveyance No. 959: Seward Meridian, Alaska (Unsurveyed)

T.20 N., R. 90 W:

Sec. 3, those lands formerly within townsite petition application F-391;
Secs. 4 and 9 (fractional), those lands formerly within townsite petition application F-391;
Sec. 10, excluding U.S. Survey No. 4099, U.S. Survey No. 5050, and Alaska Native Claims Settlement Act Sec. 3(e) applications AA-39616 and AA-39617;
Sec. 11.

Interim Conveyance No. 1058:

A tract of land located within lot 1 of U.S. Survey No. 4099, and additional unsurveyed lands in Sec. 10, T. 20 N., R. 90 W., Seward Meridian, more particularly described as:

Beginning at a point for corner No. 1, identical with corner No. 1, U.S. Survey No. 4099.

From corner No. 1, by metes and bounds, N. 83° 29′ E., 149.80 ft., to corner No. 2, a point on the 1-2 line of U.S. Survey No. 4099; thence S. 6° 31′ E., approximately 375 ft., to corner No. 3; thence N. 83° 29′ E., 300 ft., to corner No. 4; thence S. 6° 31′ E., 75.12 ft., to corner No. 5; thence S. 83° 29′ W., 449.80 ft., to corner No. 6, identical with corner No. 8, U.S. Survey No. 4099; thence N. 6° 31′ W., 450.12 ft., to corner No. 1, identical with corner No. 1, the true point of beginning.

Patent No. 50-84-0792: U.S. Survey No. 4099, Alaska, lot 3, situated near the mouth of the Kun River in the village of Scammon Bay and the designation of U.S. Location Monument No. 4099.

Kusilvak Parcel—61,174 acres

Location

The Kusilvak parcel is located on the Black River several miles west of the Kusilvak Mountains and approximately twenty miles from the Bering Sea.

General Description

This parcel is a subsurface estate and subsurface entitlement of 61,174 acres. It includes 45,458 acres of conveyed subsurface estate and 15,716 acres of remaining subsurface entitlements. The surface estate is owned by Sea Lion Corporation and is not part of the lands to be conveyed. The Black River, a major waterway, runs for about 15 miles through the parcel. The parcel is characterized by coastal lowlands and river floodplains with many large lakes and innumerable small lakes and ponds. The Black River has formed numerous sloughs, oxbows, and cutoff channels.

Refuge Values

The chief habitat and wildlife value of the parcel is waterfowl nesting. It is used by Canada geese, swans, loons, cranes, and many species of ducks, as well as shorebirds. Population densities of northern pintails and tundra swans have been mapped at 4 to 12 per square mile based on USF&W aerial surveys. Canada geese, scaup, scoter, cranes, and loons are common. Whitefish, sheefish (inconnu), and northern pike are important resources of the Black River and are heavily used for subsistence by nearby villages. Furbearers such as mink, otter, arctic and red fox are abundant in the parcel. There is moderate potential for summer and winter range for the expanding mainland musk-ox herd, which is occasionally seen in the southern part of the parcel.

Subsurface Values

These lands have been subject to oil and gas leases twice in the recent past. The geology is permissive of several mineral deposit types, however, there is little known about mineralization in this poorly explored region. The value of the subsurface in the Kusilvak area is based to a large extent on the ready supply of sand, gravel and rock.

Kusilvak Parcel Land Description

Interim conveyance No. 511: Seward Meridian, Alaska (Unsurveyed).

T.21N., R.84W.—Sec. 6, excluding Native allotment F-17513 Parcel A.
T.22N., R.84W.—Sec. 31.
T.21N., R.85W.—Secs. 2 to 7, inclusive; Sec. 18.
T.22N., R.85W.—Secs. 3 to 10, inclusive; Secs. 15 to 22, inclusive; Secs. 27 to 36, inclusive.
T.23N., R.85W.—Secs. 30, 31, and 32.
T.21N., R.86W.—Sec. 4; Sec. 5, excluding Native allotment F-19237; Sec. 6, excluding Native allotment F-19238 Parcel A; Secs. 13 and 14.
T.22N., R.86W.—Secs. 19 to 25, inclusive; Secs. 28 to 31, inclusive; Sec. 32, excluding Native allotment F-19237; Secs 33 and 36.
T.23N., R.86W.—Secs. 11 to 15, inclusive; Sec. 21; Sec. 22, excluding Native allotment F-18248 Parcel A; Secs. 23 to 26, inclusive; Secs. 27 and 28, excluding Native allotment F-18248 Parcel A; Sec. 29; Secs. 32 to 36, inclusive.

Calista 14(h)(8) entitlements—10,000 acres

These entitlements are to surface and subsurface estate and can be selected from Federal lands within the Calista Region. As in the case above, these entitlements are based on an underselection currently affecting Calista. Like the in Lieu lands, these entitlements will be used to select Federal lands which contain prospective oil and gas horizons, potential mineral deposits, or surface estate development potential, such as developable real estate, hydro power, and commercial uses such as fish processing. Calista is currently leasing several 14(h)(8) tracts to various mineral exploration companies. Calista believes that Federal acceptance of these entitlements will help limit potential adverse impacts on the Refuge.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC., November 13, 1991.

Hon. TED STEVENS,
Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR: As you requested, the Congressional Budget Office has reviewed a possible amendment to the fiscal year 1992 Defense Appropriations bill regarding a land exchange with the Calista Corporation. We estimate that enactment of this amendment would not affect the federal budget over the 1992-1996 period. Additional direct spending in the form of monetary credits could be incurred after fiscal year 1996; however, we are currently unable to estimate the magnitude of such costs.

The amendment would require federal agencies, when requested by the Secretary of the Interior, to provide land not otherwise scheduled for sale prior to November 1, 1996, to the Department of the Interior to be used in an equal value exchange with the Calista Corporation. Property held by the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) would not be subject to transfer prior to October 1, 1996. Information from Calista indicates that the corporation would like to exchange about 200,000 acres of land. The Secretary of the Interior would be required to determine the value of these lands within nine months of the date of enactment. The value of any Calista lands not exchanged by the end of fiscal year 1996 would be converted to monetary credits, which could be used to acquire federal properties, including those held by the RTC and FDIC.

Under the land exchange provisions authorized to occur over the 1992-1996 period, we expect that the federal government would give up title to land that it otherwise would not sell. CBO estimates that such a transaction would have no direct budgetary impact because we expect that the federal government would relinquish capital assets that would not otherwise have generated income for the federal Treasury.

The value of any monetary credits would count as direct spending budget authority and outlays in the year they are issued. There is no certainty, however, that monetary credits would be issued. Furthermore, such credits could not be provided until fiscal year 1997.

Monetary credits have a budgetary impact because they can be used in lieu of cash to acquire federal properties and would therefore result in forgone receipts to the federal Treasury. Because the Calista Corporation would be authorized to use its credits to acquire any federal properties, including those held by the RTC and FDIC, we believe that it is very likely that these credits would dis-

place cash receipts in future land sales. While the value of monetary credits issued to the corporation could be significant, we have no basis for predicting how much of the value of the Calista lands would not be covered by land exchanges prior to 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

PRESIDENTIAL ELECTION SYSTEM

Mr. MITCHELL. Mr. President, I am disappointed that Congress could not pass legislation this year to correct a technical problem with the Presidential campaign finance system. The problem arises as a result of Treasury Department regulations issued earlier this year that are politically motivated and inconsistent with the law.

The effect will be to prevent Democratic Presidential candidates from receiving matching funds on a timely basis. In a crassly cynical move that has absolutely no policy justification, President Bush and his Republican colleagues in Congress have blocked legislation to clarify the law.

As a result, it is quite likely that next January when Presidential candidate George Bush submits his request to the Federal Election Commission, he will claim most of the funds available in the Presidential campaign trust fund. The FEC estimates that only a fraction of the matching payments will be available in February and March for the election campaigns of the Democratic candidates.

So what we have here is a case of the Bush administration's Treasury Department issuing an unwarranted regulation, not supported by the law, that creates a situation that enables President Bush to claim the bulk of the trust fund money to the exclusion of Democratic candidates. Then, when Congress considers a minor clarification of the law to permit anticipated receipts to be taken into account, President Bush blocks consideration of the legislation. He even goes so far as to issue a veto threat.

We are led to believe the President does not necessarily oppose this legislation, he simply does not believe it should be done the year before the election. It should be done in 1993 instead. That is an absurdity. This problem was created when the President's Treasury Department issued the regulations this year. It should be corrected this year. It affects the 1992 elections. It makes no sense to wait until after the election is over to fix the problem.

This should not be a partisan issue. All six members of the Federal Election Commission, including the three Republican members and the three Democratic members, support this legislation because they know it simply enables the Presidential public-funding law to work as intended. There is no substantive argument in opposition to the provision. People who oppose this provision are opposed to the Presidential system. If so, they should attempt to repeal that law directly, not interfere with the proper operation of the law.

If the Republican Party and George Bush are opposed to the Presidential public-financing system they should work to repeal the law. At a minimum, candidate George Bush should not accept public funds. It is inconsistent for him to both oppose this provision and take millions of dollars of public funds under the Presidential system.

In fact, George Bush has received more public financing for Presidential elections than anyone in history. As a primary and general election candidate for President and Vice President in 1980, 1984, and 1988, George Bush has received approximately $140 million in public financing under the Presidential-election finance system; far more than any other individual who has ever run for President. He is expected to receive another $70 million for the 1992 election campaign. Does he support this system or is he opposed? If he is opposed he should not be taking the money. If he supports the system, there is no justification for his opposition to this provision to make the system work as intended.

It should be pointed out that the proposed legislation is a minor change that only affects the timing of matching payments in Presidential election primary campaigns. It does not affect the amount of such payments or the recipients of such payments.

The Treasury Department regulations that were issued earlier this year deal with an anticipated temporary shortage of funds for the Presidential election system. Three types of payments are made from the Presidential election fund; for the general election, for the nominating conventions, and for the primary elections. Treasury has interpreted the statute in a manner that requires that amounts from the Presidential election fund first be set aside for the cost of the nominating conventions and the general election even though that is the last of these events which will occur.

After this prepayment is made, payments will be made to the primary candidates based on the amount of money available in the Presidential trust fund. Most checkoff funds are received in March, April, and May, but the Treasury regulations do not permit such funds to be taken into account in making matching primary election payments earlier in the year. As a result, after the initial January 1, 1992, matching payments, it is expected that February and March payments to candidates will only be about 75 percent of what the candidate is entitled to. The difference would be made up later in the year as the checkoff funds are received.

According to the FEC, as of January 1, 1992, there will be approximately $128 million in the Presidential election fund. As a result of the Treasury regulations, $111 million must be set aside for the general election and nominating convention payments, leaving only $17 million as of January 1, 1992, for primary campaigns. The FEC estimates that approximately $14 million in payments will be made to primary candidates on January 1, 1992, leaving insufficient funds for February and March payments. The Treasury appropriations provision simply permits the $33 million in anticipated 1992 tax checkoff receipts to be taken into account according to standard budget procedures.

Depending on when and how candidate Bush raises primary election campaign money, he is likely to receive $14 million in matching payments from the Presidential election fund. The FEC estimates that 80 percent of those payments will be made in January and the remainder in February and March. Democratic candidates are expected to become entitled to matching primary payments later in the year. This provision would assure timely payments both to candidate Bush and to Democratic primary candidates.

HOUSE HELD UP CONFERENCE ON OLDER AMERICANS ACT

Mr. MCCAIN. Mr. President, this is not a proud day for our Nation's seniors. The House of Representatives has just left for the holidays while failing to appoint conferees so that action could be completed on the Older Americans Act reauthorization bill—which includes an amendment of mine adopted in the Senate that would repeal the Social Security earnings test. This is a travesty.

On November 12, the Senate adopted the Older Americans Act reauthorization bill and appointed conferees in the hope that this important legislation might be conferenced and signed into law before Congress recessed for the year. It is of great concern to this Senator, who is a sponsor and strong supporter of the Older Americans Act reauthorization bill, that the House appears to be holding up final action on this critical legislation for our Nation's seniors by not appointing its conferees.

As my colleagues know, the Older Americans Act provides for a number of programs that are essential to the livelihood of our Nation's most vulnerable elderly. It provides for an array of programs on which millions of older Americans depend—vital services including nutrition programs, seniors centers, community and social services, legal services, nutrition and

health promotion programs, and care for frail and homebound seniors. In addition, the act provides job opportunities and protects the basic rights of seniors.

While current law certainly will continue if the reauthorization bill is not signed into law before the end of the year, the effect of this bill's delay will be very serious. For example, delay blocks an additional $70 million in funding for the commodities program that is the nutritional lifeline for low-income seniors. Delay also blocks a critical new home health care program that was to have served as an alternative to institutional care. And, delay blocks the critical new elder-rights program that was to tackle the tragedy and disgrace of elderly abuse.

Mr. President, this reauthorization bill is critical to improving the lives and well-being of millions of older Americans. It is unconscienable, in my view, that this legislation is being held up as a result of the House not appointing conferees.

Mr. President, initially, I thought the fact that the House did not appoint conferees was an oversight, but that simply was not the case. Plain and simple, it was a ploy to avoid having to deal with the Senate's proposal to repeal the last bastion of age discrimination—the Social Security earnings test.

Mr. President, my earnings test proposal was adopted unanimously in the Senate and enjoys the support of a majority in the House. What's more, just as is the case with the Older Americans Act reauthorization bill, this proposal enjoys the support of seniors all over this country and of virtually all of our Nation's major seniors organizations. Accordingly, Mr. President, it was my sincere hope that the House would have appointed its conferees so that we could have completed consideration of this critical legislation and send it to the President for his signature before we recessed for the year. But, unfortunately, that will not happen because the House has turned its back on our Nation's seniors.

PENSION AMENDMENT TO H.R. 3543

Mr. HATCH. Mr. President, the Senator from Missouri has previously emphasized the narrowness of this particular amendment. I wonder if he could comment further on whether he views this amendment as setting any kind of a precedent for further changes to ERISA or in connection with the activities of any other carrier.

Mr. DANFORTH. Let me assure the Senator from Utah, and all of my colleagues, that I do not regard this amendment as setting a precedent of any kind with respect to changes in ERISA or with respect to the activities of any other airline. On the contrary, this amendment was narrowly drafted to apply and respond only to an unprecedented set of circumstances that I think are highly unlikely to recur in other contexts.

S. 474, A BILL TO STOP STATE-SPONSORED SPORTS GAMBLING

Mr. SPECTER. Mr. President, it is with great pleasure that I note that the Senate Judiciary Committee on November 21, voted to report favorably S. 474, a bill to stop the spread of State-sponsored sports gambling. I applaud this resounding vote to support a bill which is now cosponsored by over 59 Senators.

Sports gambling is bad for sports. State involvement in sports gambling puts the imprimatur of government behind the discredited proposition that sports gambling is a public good. Sports gambling can only be profitable if it exploits the popularity of athletics to tempt many additional people to gamble.

The simple fact is that gambling and athletics do not mix. For government to bring them together would be unwise public policy. That is why hundreds of church, youth, and law enforcement organizations throughout the country support the antigambling provision. In the end, it is our youth who will be harmed by the negative values imparted and legitimized by States that authorize sports gambling.

Federal legislation to bar sports lotteries has been pending for 2 years. Indeed, both Houses of Congress independently passed anti-sports-lottery measures last year. Now is the time to pass this important legislation.

I understand that an amendment may be offered to provide a 2-year window for States to exempt themselves from the bill. This amendment would create a great loophole. It would encourage States to rush into authorizing sports lotteries without proper consideration and adequate safeguards simply in order to keep their options open in the future. Then, once such programs were authorized, powerful special interest groups would ensure that those State-sponsored lotteries remained in place. The result would be not only more States with sports lotteries, but more States with hastily conceived sports lottery programs.

I urge my colleagues to support S. 474's purpose of keeping sports and gambling separate by voting against this amendment.

SPORTS GAMBLING

Mr. DECONCINI. Mr. President, it is unfortunate that the Senate will not have the opportunity to enact legislation prohibiting sports gambling this year. We have put together a strong bill that effectively would prevent the legitimization of sports gambling through State seals of approval. S. 474, the Professional and Amateur Sports Protection Act of 1991, would prohibit all sports gambling, by Government entities or individuals, conducted pursuant to State law. It would cover any lottery, sweepstakes, or other betting, gambling or wagering scheme based on competitive games in which amateur or professional athletes participate.

Hearings were held in the subcommittees of both the House and Senate Judiciary Committees this year. During these hearings, the case was made that legislation is needed to stop the spread of State sponsored sports gambling. My bill, S. 474, has been approved by the full Judiciary Committee. The House bill, H.R. 74, was reported out of subcommittee and then passed as part of the House crime bill. The conference committee on the crime bill agreed to include a ban on sports betting in its final report. Fifty-nine of my Senate colleagues have cosponsored my bill, S. 474. Clearly, this is a matter of importance to the Congress.

Swift action is imperative to prevent the proliferation of sports gambling. I fear that States desperate for revenue, whatever the costs, are enlisting the aid of the gambling and lottery industries to bring sports gambling to their States. Technological advances will soon allow these States to effectuate systems where bets could be made through 900 numbers, with wagers paid by credit cards.

States must know explicitly, without reservation, that Congress' failure to enact a sports gambling prohibition this year does not mean that Congress has dropped the ball on this issue. With diligence and vigor, we will move rapidly on this bill at the beginning of next year.

There is widespread support for this legislation. I have heard from many national and local organizations, sports teams, colleges, high school educators, legislators, and many others who have expressed strong support for a ban on sports gambling. Few can disagree with the strong antisports gambling message that has been heard. Mr. President, the future of America's favorite pastime, sports, is threatened. It is imperative that we act quickly.

Although I am disappointed that it appears the crime bill which incorporates the Professional and Amateur Sports Protection Act of 1991 will not become law this year, I am confident that with the broad base of support for this bill, that it will become law early next year.

In the meantime, I urge those States which are considering legislation to enact sports betting to think long and hard about the message they're sending to the young people in America. The revenues it may generate are not worth destroying the reputation of sports and sports heroes. I ask unanimous consent that immediately following this state-

ment five editorials in support of the bill be printed in the RECORD.

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

A LOSING BET

(By William F. Reed)

Whenever I go to the racetrack, which is considerably more often than the average citizen, I bet on almost every race. I like the action. I like having a personal rooting interest. What's more, I see absolutely no contradiction between my betting at the track and the fact that I'm dead-flat opposed to any further legalization of gambling on baseball, football, hockey and basketball.

Sure, I've heard all the seductive arguments in favor of legal sports gambling. The main one is that because illegal gambling on sports events is already at least a $38 billion-a-year industry, why not take it away from criminals and put it into the hands of the states? That would remove the stigma from gambling, put illegal bookmakers out of business and give cash-starved state governments a lucrative source of revenue. Simple, huh? Well, don't believe it. I say such a plan would be opening new cans of worms.

The way I see it, there's already too much legal gambling. As recently as 15 or 20 years ago the only places in this country where you could get a bet down without breaking the law were racetracks and the Nevada casinos. The gaming industry was so limited that many people who had no business gambling were discouraged from doing so. To go to a track, for example, you had to have the money for transportation, admission, a program and the Daily Racing Form. In addition to the cost, not everyone could afford the time or the trouble. Sure, there were bookies, but many people were—and are—reluctant to indulge in an illegal activity.

Now, however, we are a nation of gamblers, mainly because legal betting has become so readily available. Off-track betting, which operates in 11 states, is as much a part of some neighborhoods as the convenience store. Casino gambling in Atlantic City is within a day's drive of 60 million people, and you can even play craps and blackjack on riverboats in Iowa and soon in Illinois. Most insidious of all are the various state lotteries, which expose government at its greedy worst.

Even though a lot of lottery tickets are sold to the people who can least afford them, states shamelessly pour millions of dollars into promoting and glamorizing their lotteries instead of emphasizing that the chances of winning are umpteen million to one. The longest shot at the racetrack is far more likely to be a winner than a ticket in most lottery jackpots, yet the public keeps pouring billions down the drain. And to this we're going to add betting on games?

Aside from concerns that the passion to get rich quick through gambling is replacing devotion to hard work and saving as the American way, here are five reasons to oppose further expansion of legalized sports gambling.

Expansion of legalized gambling would induce even more people to become bettors. That, in turn, would only lead to a higher incidence of compulsive gambling. If the sad case of Pete Rose served any useful purpose, it was to emphasize that addiction to gambling can be just as ruinous as addiction to alcohol or drugs. At least Rose could afford his habit better then many others can. How about the thousands of families that are destroyed each year because the breadwinner taps out? How do we reconcile the notion that government is supposed to protect the public welfare with the idea of its simultaneously promoting an activity certain to increase a debilitating addiction?

Fan hostility toward athletes, already a growing concern, would only increase. With more people having their hard-earned cash at risk, there would be more second-guessing, especially about crucial decisions and plays that affect the point spread. My hunch is that legal betting on soccer in Europe has to be one of the factors behind the many riots that mar matches there.

Increased gambling on baseball, football, basketball and other sports would have a serious negative impact on horse racing and dog racing simply because team sports are so popular. Some may shrug this off as the law of the marketplace, and of course it is. But do states really want to risk further damaging industries that have proven their ability to generate thousands of jobs and millions of dollars in revenue but are already showing signs of weakness?

Legalized gambling would not drive the illegal bookmakers out of business because state-run betting operations would not be able to issue credit, which is one of the bookies' major enticements to gamblers.

Legalized gambling just doesn't make sense from a practical standpoint. For openers, who would establish the betting line? Are states willing to trust some guy in Las Vegas? How would the states know that the oddsmaker would not be susceptible to a bribe? What would a state do if it suddenly found itself taking a bath because of a bad line? A bookmaker can balance his books by laying off bets with other bookies. I'm not sure states would be willing or able to do the same thing.

Oh, yes. I also should mention the moral contradictions. Let me see if I've got this straight. The numbers racket is illegal if it's run by mobsters but perfectly all right if the states run it and call it a lottery. And betting on games is illegal if you call your friendly neighborhood bookie, but it's O.K. if the government gets into it. Everybody see the difference? If so, there are a lot of guys in jail for illicit gambling—most of whom have been apprehended at considerable cost to the taxpaying public—who would like an explanation.

[From the New York Times, Nov. 22, 1991]

SHAME OF THE STATES

(By William Safire)

HARPER'S FERRY, W. VA.— In Deadwood, S.D., where in 1876 Wild Bill Hickok was shot in the back during a poker game while holding a hand of aces and eights, gambling was re-introduced in 1989. Despite a betting limit of $5, the amount wagered by tourists and other suckers in the once-moribund town has already passed a third of a billion dollars.

That's only for openers. South Dakota's state lottery, reaching for the youth market, has also invested in video games, the modern equivalent of state-sponsored slot machines. West Virginia is experimenting with video machines at racetracks.

New York and Connecticut up the ante with telephone off-track betting, likely to spread to taxes and computer moderns for hacker-touts. And liberal Iowa, on the pretense of reviving interest in the less savory elements of its history, has launched riverboat-gambling on the Mississippi—retaining 20 percent of casino winnings, which longtime gamblers grumble is too much vigorish.

All this means that Americans at the state level are deciding that gambling is good—not just a tolerable evil, but a positive value. Gambling has become a goal of public policy.

Only a few years ago, proponents of state lotteries were claiming that state control would channel the profits of an unstoppable human frailty toward good ends. Why let numbers racketeers and Mafia casino operators bilk the public, their argument went—why not steer those ill-gotten gains into public schools?

The answer is spreading like a poison through state and local governments: immoral means have never led to moral ends. We are no longer skimming the profits from a criminal activity: we are putting the full force of government into the promotion of moral corruption.

What am I, some kind of stiff? Is a friendly game of gin rummy at a penny a point to be frowned upon, or a church social that raises its costs at a bingo game to be condemned, or a privately owned gambling yacht catering to rich drunks cause for conservative concern?

I'm a libertarian. If people want to titillate themselves with a game of chance, or delude themselves into thinking they can beat the odds, that's their private business. I just do not think it should be the public business.

Gambling promotion has become a key to state budget-balancing. Card-carrying right-wingers are not supposed to mind taxing the poor, but really soaking the poor—as this excessively regressive taxation does—sticks in my craw.

Why? Because it is wrong for the state to exploit the weakness of its citizens. It is the most unfair and painful form of "painless" taxation. The money isn't coming from a few big bookies and croupiers, but from the pockets of millions.

And gambling taxation feeds on itself. We cannot give up the state income from betting, say legislators who feel guilty about pretending that gambling is good, because the states have become dependent on the money, or because other states will use casinos to lure their tourism. They have become as hooked on gambling as a source of revenue as any compulsive gambler betting the milk money.

Here's what you can do to stop the explosion of government-sponsored gambling:

Tell your local television anchor you've had it with media hype of gambling. Features of giggling lottery winners or hoohahing over million-dollar jackpots is cheap-shot journalism, show us some people impoverished by gambling, or expose the cost of the state bureaucracy pushing it.

Apply truth-in-advertising to state-sponsored slots, lotteries and video games. Display prominently the odds against winning; state the number of losers for every winner. Demand stations make free equal time available for anti-gambling messages.

Demand that gubernatorial gamesters stop using their "take" for advertising; the creation of fresh demand for gambling by a public agency is against the public interest.

Tell your kids that gamblers are life's losers. Private gambling, like prostitution, should not be illegal, but it should not be treated as a value. And to make the state hustling of gambling profits the basis for state education is like shooting Marshal Hickok in the back.

[From the Cincinnati Enquirer, Aug. 20, 1991]

GAMBLING

Prohibition is the best thing that could happen to the idea of lottery betting on sports events. And that is exactly what U.S. Rep. John Bryant, D-Texas, is trying to do

with a bill that would make the practice illegal nationwide.

How ridiculous for professional sports to work so hard to stay free of the taint of gambling only to have state governments undermine the efforts. There will always be some illegal gambling. But that is limited, and will never convey the legitimacy of state-sponsored lottery betting.

The pros realize this. The Cincinnati Reds and Bengals have joined a coalition of Ohioans Against Sports Gambling to lobby for passage of Congressman Bryant's bill. Meanwhile, the group is working to keep Ohio legislators fully apprised of the harm that sports gambling would do.

The Bengals' Mike Brown said it well: "We feel legalized sports gambling promotes the wrong reason for rooting for the home team. We want people to cheer for us to win, not to cover the spread."

State lotteries are big business. There's no doubt about that. They are lucrative and competitive. And, because that's so, there is growing concern that the desire for growth is smothering good judgment.

State-sponsored sports gambling would undermine all the care and caution that have gone into keeping pro sports clean. It might even jeopardize an industry that cities such as Cincinnati and Cleveland depend on. That is simply too much to risk.

The Bryant bill should pass. And with a groundswell of public support.

CONGRESS SHOULD HALT LEGALIZED SPORTS BETTING

Commissioners of major league baseball, basketball, and football urged Congress this week to halt the spread of legalized sports betting across the nation. Representatives of revenue-hungry states, and of casinos eyeing millions of dollars in new profits, are complaining. But Congress should ban new state schemes to sponsor gambling on football or other sports. Legalized gambling could corrupt professional athletics. The United States already has too many forms of betting. The last thing the nation needs is a new enticement to gamble.

Paul Tagliabue of the National Football League, Fay Vincent of Major League Baseball, and David Stern of the National Basketball Association all testified before a congressional subcommittee Wednesday. "We do not want our games used as bait to sell gambling," said Mr. Tagliabue.

Mr. Tagliabue knows as well as anyone that illegal betting on football is already something of a national passion. But he and other commissioners argue that there's no reason to make gambling opportunities even more available.

As the recession forces states to search for new revenue, legalized sports betting looks like the next stop on government's eternal search for a painless fiscal cure. Oregon has a lottery tied to the outcome of pro sports, and Nevada allows sports betting in casinos.

Jack Gallaway, president of TropWorld Casino an entertainment resort in Atlantic City, says sports betting should be the next major item on the New Jersey casino industry's agenda. And Steven Perkins, chairman of the Casino Control Commission, sounds favorable to the idea. Race track operators, fearing even stiffer competitors, fearing even stifer competition from casinos, say they would want a piece of any new action. The pressure is on, and building.

Sen. Bill Bradley, a star with the New York Knicks before he entered the Senate, is among the cosponsors of the bill to ban new sports betting. As the commissioners testified, legal sports gambling leads to a situation in which fans start cheering to beat the spread, not just for the home to win. "When our fans begin to leave games feeling disappointed or cheated even though 'their' team has won, that spells trouble," said the NBA's Mr. Stern. Legal betting would also make it more likely that underworld types would try to fix a game. Even if that didn't happen, fans would be suspicious.

Gambling fever has gripped the United States. Almost every state in the nation now has some form of gambling, from jai alai to greyhound racing to casinos. For people who like to gamble, and who can bet sensibly, there are abundant opportunities.

But some people can't bet sensibly. Encouraged by billboards and TV ads, they bet—and lose—their mortage money, or the family food money. The time to call a halt is now. Congress should enact a federal ban on new forms of sports betting.

[From the USA Today, June 26, 1991]

STATES SHOULD KEEP OUT OF SPORTS BETTING

States are becoming addicted to gambling.

Gambling is big business: $290 billion is bet each year. Like high rollers deeply in debt, states are relying more and more on games of chance to lift them out of their fiscal ruts.

Iowa, closely followed by Illinois, is leading the charge down the Mississippi with riverboat gambling.

Thirty-three states and the District of Columbia have joined in the lottery craze.

New Jersey, Nevada, and South Dakota allow casino gambling.

A USA Today survey shows 13 states have considered or are considering joining Oregon and Nevada in legalizing betting on sporting events.

That concerns the heads of all the professional sports leagues as well as amateur athletics. Today, they'll tell a Senate panel they want to keep sports gambling from spreading to other states.

Despite the views across the page, the commissioners are right.

In previous editorials, USA Today has opposed states' spending large sums on lottery promotions; it has also opposed a national lottery that would complete with the states.

Sports gambling is another bad bet for states—

Because it encourages gambling particularly among our youth.

Because it can lead to crime, one study showed 10% of teen-agers committed crimes to support their habit.

Because money doesn't always go where it is intended; in Oregon, for the first two years, much of the revenue went into the general fund instead of college sports.

Because the odds are poor, the odds of winning Lotto America, for example, are 13 million to 1.

And because it preys upon the poor.

Gambling is especially bad for sports because it would raise concerns about the fixing of games. Fans would root for their bets rather than for their home teams.

States see gambling as a way to fill their coffers, but too many people see it as a way to fulfill their dreams.

Look across the USA, and you'll see the broken lives and unfulfilled dreams of those who took the risk—and lost.

Art Schlichter's promising National Football League career was cut short when he was suspended for gambling.

Chet Forte was at the pinnacle of the TV industry at ABC Sports until sports gambling destroyed his life.

Pete Rose was headed for baseball's Hall of Fame.

Compulsive gamblers have doubled in the last decade to 8 million—a million of them teen-agers.

YOUNG GAMBLERS

A study of college students in six states found:

Students who had gambled sometime in their lives: 87%.

Gambled weekly: 26%.

Gambled more than $100 in one day: 11%.

Fit criteria for pathological gambler: 5.7%

William C. Smith, counseling coord., Bryant College, R.I.

Gambling is already reaching the saturation point. States should not be using sports to try to make a big score.

SECTION 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET

Mr. SASSER. Mr. President, I hereby submit revised budget authority allocations to the Senate Committees on Environment and Public Works and Banking, Housing, and Urban Affairs and aggregates under section 9 of the concurrent resolution on the budget, House Concurrent Resolution 121.

Section 9(e) of the budget resolution states:

(e) TO FUND SURFACE TRANSPORTATION.—

(1) IN GENERAL.—Budget authority and outlays may be allocated to a committee or committees for legislation that increases funding for surface transportation within such a committee's jurisdiction if such a committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously-passed deficit reduction) in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

(2) REVISED ALLOCATIONS.—Upon the reporting of legislation pursuant to paragraph (1), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out this subsection. Such revised allocations, functional levels, and aggregates shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations, functional levels, and aggregates contained in this concurrent resolution on the budget.

(3) REPORTING REVISED ALLOCATIONS.—The appropriate committee may report appropriately revised allocations pursuant to section 302(b) and 602(b) to carry out this subsection.

The report of the Senate Budget Committee to accompany the budget resolution makes clear one of the available applications of this language. On page 55, the report states:

The Surface Transportation Act reserve fund is designed to cover, among other initiatives, deficit-neutral Federal-Aid-Highway, Section 3 Mass Transit Capital Grant, and Highway Safety Grant initiatives.

On June 4, 1991, the Environment and Public Works Committee reported S.

1204. S. 1204 qualified as "legislation that increases funding for surface transportation within such a committee's jurisdiction," in the words of the budget resolution, addressed matter discussed in the report of the Budget Committee, and met the other requirement of section 9 of the budget resolution that

* * * to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit * * * in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

As S. 1204 complied with the conditions set forth in the budget resolution, under the authority of section 9(e)(2) of the budget resolution, on June 11, 1991, I filed with the Senate appropriately revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out section 9 of the budget resolution. These revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates appear at page 14173 of the CONGRESSIONAL RECORD for June 11, 1991.

The Senate passed and went to conference with the House of Representatives on the House companion measure, H.R. 2950. Just this morning, the committee of conference on H.R. 2950 submitted a conference report on the legislation. As did S. 1204, the conference report on H.R. 2950 plainly qualifies as "legislation that increases funding for surface transportation within such a committee's jurisdiction," in the words of the budget resolution. It addresses matter discussed in the report of the Budget Committee. The conference report on H.R. 2950 also meets the other requirement of section 9 of the budget resolution that:

* * * to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit . . . in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

As the conference report on H.R. 2950 complies with the conditions set forth in the budget resolution, under the authority of section 9(e)(2) of the budget resolution, I hereby file with the Senate appropriately revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out section 9 of the budget resolution.

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

REVISED RESOLUTION TOTALS PURSUANT TO SECTION 9(e) OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR 1992

[Dollars in millions]

	Fiscal year	Dollars
Budget authority allocation to Environment and Public Works	1992	$18,911
	1992–96	110,885
Budget authority allocation to Banking, Housing, and Urban Affairs	1992	107,394
	1992–96	246,509
Transportation budget authority function total	1992	35,912
Resolution budget authoority total	1992	1,270,612

CONFERENCE REPORT ON HOUSE JOINT RESOLUTION 157

Ms. MIKULSKI. Mr. President, I rise in support of this conference report and urge its adoption by the Senate. This conference report contains language with respect to FEMA's disaster program which should help obviate the need for future emergency supplementals. The language reflects an agreement with the administration regarding what the average, and therefore predictable, need for FEMA disaster assistance is—$320 million per year.

Under the language, if the President requests and Congress appropriates this amount—but natural disasters occur which result in a need greater than $320 million—any amount above the $320 million would be designated as an emergency and therefore would not score against the domestic discretionary spending cap. If the President requests less than the $320 million, then the administration has agreed that any amount required above the President's request will be designated as an emergency.

If, on the other hand, Congress appropriates less than the historical average of $320 million—or the President's request, whichever is less—and requirements for FEMA disasters exceed the amount appropriated, then only the amount above $320 will be declared an emergency.

Mr. President, I know this sounds confusing, but I believe that by reaching agreement with the administration on an appropriate amount for the average need for FEMA, we can avoid in the future the kind of situation in which we now find ourselves—an $800 million backlog of needs for FEMA funding. This supplemental will take care of that backlog, but it will also help make sure that FEMA won't run out of money for disasters in future years.

CRIME BILL CONFERENCE REPORT

Mr. DOLE. Mr. President, as Yogi Berra once said, "It's deja vu all over again."

Last year, the House passed a tough antianti crime bill. The Senate passed a tough anticrime bill. And the Democrat-controlled conference committee threw them both away, and reported out a bill that did nothing to help law-abiding Americans.

This year, the House passed a tough anticrime bill. The Senate passed a tough anti crime bill. And, in the spirit of the season, the Democrat-controlled conference committee has sent the American people a turkey.

My friends on the other side of the aisle point to the good things in this bill—to the new Federal death penalty—to more money—money that is authorized, but not appropriated, by the way—for America's law enforcement community.

And no doubt about it, this bill does have some good provisions in it. But just because the radio works, does not mean that you should keep a car that is a lemon. And this bill is a lemon.

On March 11, President Bush challenged Congress to pass tough, anticrime legislation within 100 days.

Today, 260 days later, we are asked to pass legislation which falls far short of what President Bush requested, and falls short of what the American people demand, in at least five very important areas.

First, President Bush asked for legislation to limit the unreasonable appeals used by convicted criminals to delay their sentences.

The bill before us, however, would allow convicted criminals to use new laws to overturn old convictions. Indeed, in the words of the National District Attorneys Association, "passage of this bill is tantamount to handing the jail house keys to thousands of convicted State and Federal prisoners."

Second, President Bush asked for legislation that would impose an enforceable Federal death penalty on the most heinous of crimes. And the Senate and House did just that.

The bill before us, however, creates the Federal death penalty with one hand, and takes it away with the other, as it contains no safeguards to prevent the obstruction of the Federal death penalty through endless collateral litigation.

Third, President Bush asked for legislation which would stop obviously guilty criminals from being set free on a technicality.

The bill before us simply codifies existing exclusionary rule law, and through skillfully written language, would actually require the exclusion of more evidence than the existing rules.

Fourth, President Bush asked for legislation which would come down on the side of victims of crimes of sexual violence. The President proposed, and both Houses of Congress passed legislation to do just that—legislation that threw the book at recidivist rapists and child molesters.

The conference committee, however, did the following:

It threw out provisions requiring increased maximum penalties for rapists and child molesters.

It threw out provisions requiring HIV testing of Federal sex offenders, with disclosure of test results to the victim.

It threw out provisions mandating that the Government pay the cost of HIV tests for victims of Federal sexual crimes. Instead, the committee wants victims to pay the cost out of their own pocket.

It threw out provisions requiring restitution to victims of rape, child molestation, and child sexual exploitation, whether or not physical injury results from the crime.

And, by the way, it also threw out provisions which increased the penalties for selling drugs to pregnant women.

And, finally, Mr. President, the bill before us would overturn the Supreme Court decision of Arizona versus Fulminante.

The practical effect of this action is that confessed killers, rapists, drug traffickers, and other criminals, will have their convictions overturned.

For these reasons—and many more—President Bush has pledged to veto this bill. It's a veto that is in the best interests of law-abiding citizens. And it's a veto that will be sustained.

Mr. President, if the Democrats are looking for a campaign issue, they have got it. I will be perfectly willing to put the President's proposal and the one the Democrats rammed through the conference committee sight unseen, side-by-side, and let the American people decide who's in their corner.

ON PASSAGE OF H.R. 3327

Mr. SPECTER. Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, I am pleased to support the passage of H.R. 3327.

This bill would require the Secretary of Veterans Affairs to designate one of the Assistant Secretaries in the Department of Veterans Affairs [VA] as the chief minority affairs officer of the Department. That individual would be required to investigate VA's policies as they affect beneficiaries who are members of minority groups; assess the needs of those beneficiaries; and to advise the Secretary on the effect of VA policies on such beneficiaries to ensure that minority group beneficiaries are afforded an opportunity to participate fully in VA's activities and benefits.

This is an important provision, Mr. President, and very similar to a provision the Senate recently passed in S. 869. By placing this duty at the Assistant Secretary level, this provision demonstrates the commitment of the Congress to equality in opportunity for all of our veterans.

I urge my colleagues to support this important bill.

CRIME BILL CONFERENCE REPORT

Mr. BIDEN. Mr. President, today, the Senate Republicans took the final step in the legislative process, and killed what would be the toughest anticrime law in U.S. history.

In brief, the highlights of this package include: The Senate-passed Brady bill, imposing a national 5-day waiting period for handgun purchases, and a system of background checks for those seeking to buy handguns; a vast expansion of the death penalty—to 53 offenses—including the murder of a police officer, murder in the course of rape or child exploitation, drive by shootings, and the death penalty for drug kingpins; a $1 billion authorization for local police; a new drug emergency areas plan to help hard-hit cities; a program for prisons to hold drug criminals; boot camps at old military bases to hold youthful offenders; a police corps, to put more police officers on the streets; new gun-crime penalties for using a gun during a crime, stealing a gun, for owning a gun if you are a felon—and even the death penalty for Federal gun murders; aid for crime victims; reform of habeas corpus and the exclusionary rule; initiatives to fight gang violence and rural crime; and measures to protect our children from abuse, and from drunk drivers.

It was a vast bill and a comprehensive approach to fighting crime in America today.

The conference report received much praise, but also, much criticism. Let me start with the latter.

One set of criticisms came from my friends on the left. Many are death penalty opponents; a position I respect tremendously, even if it is one I do not share. Others fear that the habeas corpus and exclusionary rule provisions go too far in cutting back on civil liberties.

To these people I say, "yes, the bill does restrict some liberties." It limits your right to buy a gun on demand. It limits your freedom, if you commit certain crimes, by imposing new, higher, mandatory sentences. It limits the right to endless appeals.

These are limits on civil liberties. But the basis for the civil liberties of all Americans is a Nation governed by the rule of law. And the lawlessness in our streets today is undermining the public's confidence in that system.

When confidence in the rule of law erodes, sweeping measures—which threaten to wipe out civil liberties altogether, gain in credence. We can see this happening already: Compare the bill the Senate votes on today to the one that the President of the United States proposed, just 6 months ago. His bill: permitted deportation of U.S. residents without a hearing and without legal representation; allowed the use in evidence of any gun, however seized by police—even if the police broke down every door on a block on a whim; totally eliminated any Federal court review of death sentences, as long as State courts heard the case.

And the list goes on. Unless we take steps to control crime, I say to my progressive friends, the more draconian proposals that we have successfully resisted in this bill—proposals that would strip liberties without making our streets safer—will gain acceptance.

This bill would have served to fight crime, while doing the least possible damage to legitimate civil liberties concerns. It is always a balance, and I believe we should have accepted the balance struck here.

The more vocal criticism of this bill has come from the right—largely from the President, and from other allies of the National Rifle Association.

I understand the position of the allies of the NRA. They don't like the Brady bill. They never have. And even though polls show that 80 percent of NRA members, and 90 percent of the American public support the Brady bill, these die-hards will not quit.

But, of course, they do not want to come right out and say, "We oppose this tough crime bill because we oppose the Brady bill." So instead, they reach into their bags and pull out a label that is so tired, and so worn—and they say: "This bill is pro-criminal."

Frankly, I am sick and tired of hearing this. Pro-criminal? I do not know anyone in the Senate who is "pro-criminal." The very term is offensive; it demeans our debate; it is the cry of those so bereft of arguments of substance that they fall to using shrill attacks, instead of reasoned appeals.

Well, let's lay our cards on the table. I supported this bill. Am I "pro-criminal?" The Fraternal Order of Police supported this bill. Are they "pro-criminal?" The National Association of Police Organizations supported this bill. Are they "pro-criminal?"

No one should be throwing labels around like "pro-criminal." If you called this bill pro-criminal, you called its supporters pro-criminal. And I defy—no, I dare—any of my colleagues to take this floor and call the major police organizations of this country pro-criminal.

The supporters of this bill—the police who wanted us to pass this bill—don't stand on the Senate floor to fight crime. They put their lives on the line to fight crime.

So I say to my Republican friends: the police don't want your tough on crime speeches anymore. They don't want to hear you say, "I voted against this crime bill to wait for another one with a better habeas."

America's police want your help, they wanted your vote for this bill. And we owed it to them.

A "pro-criminal" bill, the critics say? A bill with 53 death penalty offenses, "pro-criminal"? A bill that required background checks before gun purchases, to keep guns away from criminals, "pro-criminal"? A bill to add more police, more prosecutors,

more DEA and FBI agents, more prisons, more boot camps, "pro-criminal"? A bill to raise the penalties for gun crimes, for drug dealing, for drunk driving, "pro-criminal"?

"Oh, but what about habeas corpus," the critics say. This bill limited prisoners to one Federal appeal, within 1 year—an unprecedented limit on the great writ. What about exclusionary rule? This bill provided a good faith exception to that rule, where police have a warrant. What about coerced confessions? All this bill would have done was make it illegal to use at trial confessions obtained through unconstitutional coercion.

There they are, the so-called pro-criminal provisions in this bill: limited appeals, limited exclusionary rule, no coerced confessions. To even claim that this bill was pro-criminal is to see what garbage that charge is.

The administration always complains about criminals getting off on technicalities. But in using habeas corpus as a reason to kill the Brady bill, the President got the NRA off on a technicality.

Yes, the district attorneys said this bill was soft on crime, because they put habeas reform first on the list of what they wanted done to fight crime.

With all due respect, the only risk district attorneys take each day is the danger of a paper cut from a habeas petition. Habeas reform might make them safer.

But our police risk their lives each day from bullets and guns. They want the Brady bill. They want death penalty for cop killers. They want stiffer penalties for gun crimes. They want more prisons to keep the criminals off the streets. They want training and equipment.

That's what this bill would have done. So if you voted "no" you can say it was to protect DA's from paper cuts from habeas petitions. To protect cops from handgun killers, you must have voted "yes."

What did the police say about this bill? The Nation's largest police group, the F.O.P., said: We "call on Congress to adopt, and for the President to sign, this bill. It is the toughest anticrime legislation to emerge from Congress in recent memory, and should become law."

The Nation's second largest police group, the National Association of Police Organizations, said: We "support—prompt enactment of the crime bill as reported out of conference—[it is] tough anti-crime legislation."

And they concluded with: "We urge you to enact this badly needed anti-crime legislation immediately."

The International Association of Chiefs of Police—the police chiefs—wrote that they "support the conference report," saying, "the net effect of—the conference report will benefit the public at large as well as those who are charged to protect them."

If you voted against these men and women who are asking for your help, you can tell them you did it because you want to protect the NRA more than you want to protect our police; or because you care more about the technicalities of habeas corpus reform than you do about the death penalty and putting more cops on the street.

Tell them what you will. I will say only this, in conclusion.

We are in the midst of the third straight year, under this President, of a national record for murders. A record every year of this Presidency.

We are in the midst of an all-time record for rapes. More Americans are addicted to cocaine and heroin today than ever before.

Today, we could have done something about this—we could have expanded the death penalty, required background checks for handgun buyers, we could have beefed up our police departments and prisons.

But this bill was voted down, killed by the Republicans in the Senate at the behest of the President.

There will be no Brady bill. There will be no death penalty. There will be no added police, prisons, prosecutors. There will be no increased penalties.

People will die as a result. That's the truth. People will die from crimes that we could have stopped with this bill. People will die while we are waiting for another crime bill.

Tell the folks back home that you voted this bill down because you wanted a better habeas corpus. Say you voted against it because you wanted a better exclusionary rule, or because you think we need to use coerced confessions—not police or prisons—to fight crime.

Say what you will. But the fact is this: We could have passed a tough anticrime bill today if the President and the Republicans in the Senate had wanted to do so.

Mr. President, I ask unanimous consent that assorted documents in support of the crime bill be printed in the RECORD.

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

LAW ENFORCEMENT SUPPORTS THE CRIME BILL

Law Enforcement support for the Crime Bill Conference Report has been overwhelming. Here is what the nation's largest police organization are saying:

Fraternal Order of Police: We "call on Congress to adopt, and for the President to sign, this bill. It is the toughest anti-crime legislation to emerge from Congress in recent memory, and should become law."

National Association of Police Organizations: "We believe that the Bill's positive response to the need for overall improvement in law enforcement far overshadows any possible disagreement over individual provisions. * * * As a significant body of law enforcement officers who risk life and limb daily to protect the American public, we urge you to enact this badly needed anti-crime legislation immediately."

International Association of Chiefs of Police: "The[] provisions in the Conference Report will benefit the public at large, as well as those who are charged to protect them * * * we support the Conference Report."

International Brotherhood of Police Officers: "America needs a crime bill now—in this session, passed by the Congress and signed by the President. * * * As the President of [IBOP], I urge you to adopt the conference report and pass this important legislation."

Police Executive Research Forum: "The Crime Bill provisions that mandate a waiting period between the purchase and receipt of a handgun and support for state and local law enforcement agencies * * * are signs to law enforcement that Congress is ready to help police do their jobs. * * * [T]he Crime Bill will advance law enforcement's commitment to protecting our nation's citizens. * * * PERF supports passage of this legislation. * * *

International Union of Police Associations: "[W]e recognize[] the real need for enactment of the Conference Committee version of the Crime Legislation and support it fully."

National Organization of Black Law Enforcement Executives: "The National Organization of Black Law Enforcement Executives is grateful to you and your colleagues for recognizing the necessity to propose the Crime Bill. NOBLE, an organization representing 2,500 law enforcement executives, who in turn, represent the populations in most major urban cities in our nation, is pleased to endorse this proposed legislation."

Mothers Against Drunk Driving: "Mothers Against Drunk Driving looks forward to the passage of [the Conference Report] and the implementation of the Drunk Driving Child Protection Act."

FRATERNAL ORDER OF POLICE,
Columbus, OH, November 26, 1991.

Hon. JOSEPH BIDEN,
Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BIDEN: I have had the opportunity to review the contents of the compromise reached by the House and Senate conferees who met on November 24 regarding H.R. 3371, the Omnibus Crime Control Act of 1991. On behalf of the 230,000 members of the National Fraternal Order of Police (NFOP), the largest organization of law enforcement professionals in this country, I am pleased to advise you of our support for the conference agreement.

Clearly, the legislative process is the art of the possible triumphing over perfection. The NFOP certainly would have preferred certain language not presently found in the Conference agreement such as the Senate provisions on corpus reform, the "Police Officers' Bill of Rights," and semiautomatic assault weapons as well as the House language on "good faith" warrantless searches by police. However, the conference agreement also has much to recommend it, including the so-called "Brady" language on handgun purchases, reinstatement of the federal death penalty for a variety of federal crimes, the establishment of a police corps program, and the funding of vitally needed local anti-crime initiatives nationwide, just to name a few.

Those of us charged with enforcing the laws of this nation need good legislation to help us do our job, not endless finger-pointing and jockeying for some temporary partisan political advantage. Although the

NFOP is prepared to continue to work for enactment of legislation in the areas not adequately covered in the conference agreement, let us move forward on that which is attainable. Accordingly, I call on the Congress to adopt, and for the President to sign, this bill. It is the toughest anti-crime legislation to emerge from Congress in recent memory and should become law.

With kind personal regards, I remain

Sincerely,

DEWEY R. STOKES,
National President.

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.,
Washington, DC, November 25, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I am writing on behalf of the 135,000 rank-and-file police officer members of the National Association of Police Organizations ("NAPO"), to express our support for prompt enactment of the Crime Bill as reported out of conference on Sunday.

First, let me say that NAPO has followed the development of the Crime Bill closely during this congressional session and believes the version which has been reported out of Conference to be tough anti-crime legislation which goes a long way toward meeting the acknowledged need for substantial improvements in America's criminal justice and crime detection and prevention systems. While we do not agree with each and every provision of the Conference version, and especially regret the deletion in Conference of the Senate-passed Assault Weapons Ban and Law Enforcement Officers Bill of Rights, we believe that the Bill's positive response to the need for overall improvement in law enforcement far overshadows any possible disagreement over individual provisions.

Further, as we have said repeatedly in the past, we do not believe that so critical a national priority as the battle against crime should be mired in political partisanship. Hence, the sooner the current Crime Bill is enacted, the sooner the many reforms and innovations that it contains can be implemented.

As a significant body of law enforcement officers who risk life and limb daily to protect the American public, we urge you to enact this badly needed anti-crime legislation immediately.

Very truly yours,

ROBERT SCULLY,
President.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE,
Arlington, VA, November 25, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: I have always felt it important that our federal legislators hear from representatives of the law enforcement community on critical issues facing the country in a clear and timely manner. It is out of this concern that I, as President of the International Association of Chiefs of Police, write to you at this vital time. Members of the Senate and House of Representatives have conferenced the Crime Bill and it is now awaiting ratification by both chambers in preparation for sending it on to the President for his signature.

The Conference Report addresses many issues of concern to the Law enforcement community. Some of these elements are reflective of IACP's longstanding legislative agenda and we are pleased to see them incorporated into this proposal. Key among them are: a national waiting period for the purchase of a handgun; expansions of death penalty provisions in federal law; additional funding support for state and local law enforcement; and, increased support for federal law enforcement efforts. The Conference Report also incorporates many salutary provisions such as anti-gang violence programs; rural crime initiatives; expansion of aid to victims of crime; establishment of funding for emergency crime areas; and, measures designed to protect our children from abuse.

The net effect of the changes of these provisions in the Conference Report will benefit the public at large as well as those who are charged to protect them.

As you know, Mr. Chairman, IACP has been on record as supporting the President's Crime Bill. It is important to note that we also have advocated other provisions not contained in that measure. While we support the Conference Report, we recognize that it does contain some elements that could be strengthened. We hope to have the opportunity in the months ahead to work with you and representatives of the Administration to address these issues.

I appreciate having this opportunity to share my views with you and look forward to working with you in the future on these and other issues of mutual concern.

Sincerely,

C. ROLAND VAUGHN III,
President.

INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS,
Arlington, VA, November 26, 1991.

Hon. JOSEPH BIDEN,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN BIDEN: I am writing on behalf of the thousands of rank-and-file police officer members of the International Brotherhood of Police Officers (IBPO), to express our support for prompt enactment of the conference agreement to accompany H.R. 3371, the Crime Bill.

Throughout this session, both the Senate and the House of Representatives devoted considerable time and attention to developing proposals aimed at reducing crime in this country. Both the House and the Senate approved crime legislation (H.R. 3371 and S. 1241) by wide margins. Overall, we believe that the conference agreement attacks the substantive problems of crime in America by providing increased resources to the front lines, including state and local officers. Once enacted, we hope that the Congress will swiftly appropriate the $1 billion that Senator Biden's provision authorizes for state and local aid.

America needs a crime bill now—in this session, passed by the Congress and signed by the President. While the IBPO does not agree with each and every position to which the Conferees agreed, overall the bill is tough and fair. Faced with the prospect of no bill at all, there is no doubt that this crime legislation should be approved quickly.

Political shell games are of no use to the American people, who wish to remain safe in their homes, or to the professional law enforcement practitioners who fight crime in this country.

As the President of an organization that represents rank and file officers on the front lines in the war on crime and drugs, I urge you to adopt the conference report and pass this important legislation.

Sincerely,

KENNETH T. LYONS,
National President.

INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL–CIO,
Alexandria, VA, November 26, 1991.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: The International Union of Police Associations, I.U.P.A., AFL–CIO which represents over 40,000 working street level police officers and over 140 local police unions throughout the country, worked long and hard with your staff and the staff of the supporters of the current crime legislation in the House to achieve the best possible end result. We do support the final result.

We have some concerns with the Crime Bill as approved by the Conference Committee. A Police Officer's Responsibility Act on the Moran model meets a serious need in the effort to modernize and reform American policing; and the Police Corps seems to us to be wrong headed in its use of a corps of well meaning college students as a replacement or partial replacement for long term professional working cops. The Police Corps should be made of working professional cops. It should be designed to provide educational benefits to young people with a proven record of police work; not to attract college students who would otherwise be uninterested in police work to that career. We also have some concern about the lack of assault weapon protection in the final bill.

However, even with all these concerns, we recognized the real need for enactment of the Conference Committee version of the Crime Legislation and support it fully.

Sincerely,

ROBERT B. KLIESMET,
International President.

POLICE EXECUTIVE RESEARCH FORUM,
Washington, DC, November 26, 1991.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: On behalf of the members of the Police Executive Research Forum (PERF), I would like to thank you for your efforts on the Crime Bill. PERF members represent the largest jurisdictions in this country, serving more than 30 percent of the nation's population. They are overwhelmed by the crime-related violence and decay they see destroying their communities. We applaud attempts by you and your colleagues to do something about it.

The Crime Bill provisions that mandate a waiting period between the purchase and receipt of a handgun and support for state and local law enforcement agencies, in particular, are signs to law enforcement that Congress is ready to help police do their jobs.

It is true that PERF members do not support every provision of this comprehensive package, but on balance we believe the passage of this bill will advance law enforcement's commitment to protecting our nation's citizens. While there are issues raised by the Crime Bill that can be more adequately addressed in the future, PERF supports passage of this legislation and appreciates your efforts to meet law enforcement's needs.

Sincerely,

DARREL W. STEPHENS,
Executive Director.

NATIONAL NETWORK FOR VICTIMS OF SEXUAL ASSAULT,
Arlington, VA, November 25, 1991.

Hon. JOSEPH BIDEN,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to thank you for your help in ensuring that the crime bill conference report includes provisions important to victims of crime.

We are particularly grateful for your help in preventing House amendments to the Victims of Crime Act which would have made serious cuts in federal funding for crime victim assistance. Those cuts could have resulted in reduced services to victims of crime at a time when violent crimes against American women and children are at an all-time high.

We look forward to Congressional passage of the crime bill; and, to a more secure and stable future for crime victim assistance efforts as a result of your work.

Sincerely yours,

MARY ANN LARGEN,
Executive Director.

NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES,
Washington, DC, November 26, 1991.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: The National Organization of Black Law Enforcement Executives (NOBLE), is grateful to you and your colleagues, for recognizing the necessity to propose the Crime Bill. NOBLE, an organization representing some 2,500 law enforcement executives, who in turn, represent the populations in most major urban cities in our nation, is pleased to endorse this proposed legislation.

There are issues contained in the Bill that we, along with other law enforcement organizations, wish could be modified, however, they are not sufficient to prolong the enactment of this much needed legislation.

Let me take this opportunity again, to thank you for your participation in our 15th Annual Conference in Philadelphia last August. Your stirring and informative remarks fell on attentive ears, and we consider ourselves to be your ally in the struggle for justice.

Sincerely,

CASSANDRA E. JOHNSON, J.D.,
Executive Director.

MOTHERS AGAINST DRUNK DRIVING,
Irving, TX, November 25, 1991.

Hon. JOSEPH H. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: Mothers Against Drunk Driving is pleased to note the inclusion of the "Drunk Driving Child Protection Act" as an element of the conference agreement on H.R. 3371. As you well know, this legislation, which enhances the penalties for drunk driving on federal property when a minor child is in the vehicle, was included in the Senate-passed anti-crime package as Title XVIII of S. 1241.

The Drunk Driving Child Protection Act will send a clear signal to the states as regards to their own penalties for drunk driving when minor children are involved. Drunk driving is a crime. Drunk drivers chose to commit this crime, but children who have no option but to get in a car with an impaired father, mother or guardian are its innocent victims. Once again, you have demonstrated leadership in proposing and passing legislation sensitive to the needs of the victims of the crime of drunk driving.

Mothers Against Drunk Driving looks forward to the passage of H.R. 3371 and the implementation of the Drunk Driving Child Protection Act.

Sincerely,

MILO KIRK,
President.

U.S. CONFERENCE OF MAYORS,
Washington, DC, November 26, 1991.

Hon. JOSEPH BIDEN,
Chairman Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: Congratulations on shepherding a crime bill through the Conference Committee which will work both to prevent crimes from occurring in the first place and to strengthen and enforce the laws against those crimes which do occur. The bill includes several provisions of particular importance to cities, including the waiting period in handgun purchases, direct funding to cities for community policing, and an increased authorization for the enforcement block grant.

Typical of most compromises, the crime bill does not satisfy the needs of all parties. It does include, however, enough of the provisions included in the House and Senate-passed versions and called for by the Administration, that it should be enacted into law.

America's mayors urge the Congress to pass the conference report on the crime bill and the President to sign it. Should the President veto the bill, as he has indicated he will do, we urge the Congress to override that veto. Attached is a statement on the crime bill which our President, Boston Mayor Raymond Flynn, is issuing today.

Sincerely,

J. THOMAS COCHRAN,
Executive Director.

NATIONAL LEAGUE OF CITIES,
Washington, DC, November 26, 1991.

Hon. JOSEPH BIDEN,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the 16,000 cities and towns represented by the National League of Cities, I would like to express NLC's support for the immediate passage of two provisions contained in the 1991 Anti-Crime Conference Report. One would require a five-day waiting and cooling-off period for handgun purchases. The other would call on the Attorney General to study the procedures followed in internal, noncriminal investigations of local law enforcement officers.

NLC believes that the Senate-passed handgun provisions contained in this legislation would provide a modest, yet critical step towards reducing the incidence of crime and violence that plagues cities and towns across the country. The House-passed study provisions would provide essential documentation of effectiveness and fairness of the policies and practices used to conduct noncriminal internal investigations of state and local law enforcement officers.

These provisions should be approved by the Congress and signed into law by President Bush before the Congress adjourns for the year.

Sincerely,

DONALD J. BORUT,
Executive Director.

NATIONAL WOMAN ABUSE PREVENTION CENTER,
Washington, DC, November 25, 1991.

Senator JOSEPH BIDEN,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: The National Woman Abuse Prevention Center would like to express our support of The Violent Crime Control and Law Enforcement Act of 1991, the "Crime Bill," which has just emerged from Conference Committee. We believe that the Conference Report takes some very strong measures that are urgently needed for increased protection and services for victims of domestic and sexual crimes.

We are particularly pleased with the Conference version of the amendments to the Victims of Crime Act removing the "cap" from the VOCA Fund, making the Crime Victims Fund a permanent account, and establishing a fine collection center which will aid in the collection of up to a billion in federal fines going to the Fund. In addition the bill strengthens the consideration of "Victim Impact Statements" at trial and offers victims the chance to speak at the sentencing of their assailant.

In particular, we are encouraged by the inclusion of the Brady Bill in the Conference Report. As you know, hand guns play a significant factor in the three to four thousand domestic violence deaths annually. The Brady Bill is one small, but critical, step toward curbing that violence.

We were disappointed that Senator Biden's Violence Against Women Act, which we believe is critical to improved safety and protective services for battered women and sexual assault victims across this country, could not be included in the Crime Bill. We know his commitment to that bill remains strong, and look forward to its continued progress. And although neither our organization individually, nor the Domestic Violence Education and Legislation Coalition, the coalition of national and state domestic violence organizations, support the death penalty, we believe that the prevention provisions and the increased penalties under the Crime Bill are very strong, and we support the Conference Report for that reason.

If there is anything we can do to be of assistance, please let us know.

Sincerely,

MARY PAT BRYGGER,
Executive Director.

MIDNIGHT BASKETBALL LEAGUE INC.,
Hyattsville, MD., November 25, 1991.

Re section 1831 of the House version of the Crime bill.

Hon. JOSEPH R. BIDEN,
U.S. Senate, Judiciary Committee, Washington, DC.

DEAR SENATOR BIDEN: The bi-partisan sponsorship of this bill is reflective of the wide-spread support for the concept and goals of the Midnight Basketball League, a sports linked life skills training program.

The league was named by the President as one of the "Thousand Points of Light." The National Association of Midnight Basketball Leagues (NAMBL) has been established to insure a uniform national network in order to be attractive to national corporate sponsors.

The NAMBL expects to match the federal funding dollar for dollar in order to assure the viability of the public-private partnership at the national level.

The number of cities joining the Association is increasing at an accelerated rate.

This letter requests your support in the continuing struggle to slow down the transi-

tion of many of our young adults from high-risk to the Criminal Justice System.

Very truly,

G. VAN STANDIFER,
President.

DEPARTMENT OF JUSTICE,
New Orleans, LA, November 26, 1991.

Hon. J. BENNETT JOHNSTON,
U.S. Senator,
Washington, DC.

DEAR BENNETT: I write to you because I understand that the House will shortly consider the conference report on H.R. 3371, the crime bill. I oppose the habeas corpus provision passed by the Senate, which embodies the Administration's proposal, and support the House habeas corpus provision, which is contained in the conference report. I urge you to do the same.

I am a member of the Emergency Committee to Save Habeas Corpus, which was formed to oppose the habeas corpus provision in S. 1241, the Senate crime bill. You should receive a separate letter from the Emergency Committee on this issue.

My reasons for urging you rejection of the Senate habeas corpus proposal and your support of the conference report are set forth in the attached letter that I sent to Don Edwards, Chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights.

As Attorney General, I am convinced and I hope you will agree with me on these three issues. First, habeas corpus must be reformed. Second, habeas corpus is a fundamental right that must be protected. Third, the House habeas provision best meets these goals. The Administration proposal contained in the Senate bill, by contrast, would actually increase litigation, delay finality and dispense with fundamental rights.

If you have any questions about this issue, please feel free to call on me.

Sincerely,

WILLIAM J. GUSTE, Jr.,
Attorney General.

NOVEMBER 26, 1991.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. SPEAKER: I am writing to express my strong support for the habeas corpus reform provisions contained in the Conference Report to H.R. 3371. These provisions significantly improve and streamline the habeas process while retaining the right to federal review of unconstitutional state court convictions. Contrary to the contentions of the Administration, this bill is not more liberal than current law on habeas corpus.

As you know, I was the Attorney General of the State of Texas for eight years. I was known as a tough law enforcement officer. I was a strong advocate of the death penalty. I believe that the criminal justice system should function efficiently. Nevertheless, I feel that H.R. 3371, not the Administration's more extreme approach, is the appropriate solution to the problems with the process. In a word, this legislation would reform habeas corpus; it would not end it.

There is clearly a need for reform, especially with respect to capital cases, but I believe that H.R. 3371 addresses the real problems with the present system; inadequate representation by trial counsel, no time limits on petitions, successive petitions, and retroactive applications of new rules of law. This reform can and must be accomplished without sacrificing the right to habeas corpus review, which is one of our most basic protections against the imprisonment or execution of innocent persons.

Because of these concerns, I have joined with more than 90 others, many of whom are present or former prosecutors like myself, in forming the Emergency Committee to Save Habeas Corpus. I think I can safely say that all of us want to fight crime. We all agree that we, and our elected representatives, must not squander our precious constitutional rights in our zeal to appear "tough on crime."

Sincerely,

JIM MATTOX,
Attorney and Counselor.

NATIONAL SHERIFFS' ASSOCIATION,
Alexandria, VA, November 27, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: After reviewing the contents of the recent compromise reached by the House and Senate conferees, I, as president of the National Sheriffs' Association, would like to inform you that the sheriffs of this nation wish to go on record as supporting the 1991 Crime Bill.

We are aware that the Conference Report addresses many issues of great concern to the law enforcement community. Among them include: the national waiting period for the purchase of a handgun; additional funding support for state and local law enforcement; expansion of the death penalty provision in federal law; and, the rural crime initiatives.

Additionally, it is our opinion that the Bill is negligent in other areas, such as: provisions on habeas corpus reform, semi-automatic assault weapons, as well as the language on "good faith" warrantless searches by police.

This bill is the toughest anti-crime legislation to surface in many years. We are convinced it should become law.

Respectfully,

MARSHALL E. HONAKER,
President,
National Sheriffs' Association.

Mr. THURMOND. Mr. President, I rise in strong opposition to this conference report on the crime bill. This bill is a travesty which does more to advance the interests of convicted criminals than it does to protect victims of violent crime. The Attorney General has recommended that this sham bill be vetoed and President Bush has written the Senate Republican leader stating his intention to veto the measure if it ever reaches his desk.

The average American today is no stranger to the volume of violent crime ravaging our cities and towns. Every citizen knows that a principle reason for the growth of violence is that our criminal justice system has become soft on heinous criminals, failing to impose swift, effective punishment. Offenders who commit violent offenses no longer expect to be held accountable for their actions. Incredibly, this feeble conference report continues this trend by siding with the criminal.

Over the last several years, many of us have been engaged in an ongoing effort to redress these inadequacies in the criminal justice system. This effort resulted in the passage of a Senate bill and a House bill containing proposals on the death penalty, habeas corpus reform, and the exclusionary rule. Yet, these proposals were substantially different in the two bills and, unbelievably, a number of provisions in the bills expanded the rights of criminal defendants.

Prior to convening the crime conference, I had expressed concerns about the ratio of Democrats to Republicans. Frankly, I felt that there was an effort to stack the deck in favor of death penalty opponents and in favor of a weak crime bill. Unfortunately, I was correct. The conference was unfairly balanced, and rigidly scripted by the majority, where the views of Republican conferees were ignored. Although this report is being called a compromise by some, it is no such thing. With remarkable consistency, the Democrat controlled conference committee rejected the tougher option on these major points and opted instead for provisions that handcuff law enforcement and reduce the safety of law abiding citizens. While I truly want a crime bill, I will not accept a bill which expands the rights of criminals. This bill is not an anti-crime bill. It is a procriminal bill.

HABEAS CORPUS

For example, the most troubling provision in this bill is the habeas corpus language. Although the Senate passed tough habeas corpus reform by a vote of 58 to 40 as part of S. 1241, this conference report adopts the liberal House language on this subject. It systematically reverses over 14 Supreme Court decisions favorable to law enforcement and, according to the Department of Justice, will throw the prison doors wide open for thousands of dangerous criminals throughout the Nation. Standing alone, this provision is enough to compel the Senate to reject this conference report.

Those who support this report have stated that the habeas provision in the Senate bill is tough. Yet, they claim the conference report still limits appeals. This is not correct. Without question, this provision expands the rights of death row inmates. This death row inmates' wish list is opposed by President Bush, the Attorney General of the United States, the National District Attorneys Association which represents our city and county prosecutors, the State attorneys general, the National Association of Attorneys General, the Conference of Chief Justices, numerous law enforcement organizations, and crime victims groups.

Thirty-one State attorneys general, 16 Republicans and 15 Democrats, recently wrote President Bush urging him to protect the American people and veto any bill which contains this habeas corpus proposal. They stated that any bill containing this weak proposal, and I quote: "cannot be described accurately as an anti-crime bill but would instead be a pro-criminal

bill and particularly a pro-convicted murderer bill." We must not ignore and dismiss out of hand the concerns of these law enforcement officials who clearly understand the devastating and adverse effect of this conference report.

Mr. President, I strongly concur with their assessment. There are currently over 2,500 individuals on death row. Yet, since 1972, only 159 brutal murderers have had their sentences carried out. This is due to the continued abuse of habeas corpus law by the death row inmates and their liberal lawyers who are set on eliminating the death penalty de facto.

DEATH PENALTY

Mr. President, although this conference report sounds tough, it is not. Another example of this is the death penalty. Although the report authorizes the death penalty for over 50 Federal offenses, the trial procedures make it extremely unlikely that the death penalty would ever be imposed. Furthermore, the habeas proposal contained in this report renders the death penalty meaningless since virtually no sentence will be implemented. In addition, the report rejects a Senate passed provision which made murders committed with a firearm a Federal death penalty offense.

EXCLUSIONARY RULE

The House crime bill, as well as the President's bill, responded to some of the serious problems caused through application of the exclusionary rule. All too often in violent crime and drug cases, evidence is excluded at trial simply because the law enforcement officer innocently violated search and seizure rules. The House passed provision codifies and expands upon the good faith exception to the exclusionary rule as embodied in U.S. versus Leon. It provides that when an officer acts in good faith compliance with the fourth amendment, any evidence obtained therefrom will be admissible as evidence in a criminal trial.

The conference report rejects this important measure and instead rolls back court decisions to the detriment of law enforcement. It substantially narrows the good faith exception to the exclusionary rule. This provision handcuffs law enforcement in their efforts against criminals. It is yet another provision which expands the rights of criminals.

ADMISSABILITY OF CONFESSIONS

Unbelievably, this report contains a board provision which mandates automatic reversal of criminal convictions based on improper admission of a defendant's statements or confession at trial. This new rule applies even in cases where it is shown beyond a reasonable doubt that the error was a harmless error and could not have affected the outcome of the case. It overturns the Supreme Court case of Arizona versus Fulminante which correctly allows the "harmless error" rule to apply to confessions by criminals. According to the Department of Justice, the result of this pro-criminal provision will be the release of an untold number of murderers and other violent criminals. The decision of the conference to include this measure in the report reflects an arbitrary determination on the part of liberal members to free criminals on the basis of technicalities.

SEXUAL VIOLENCE AND VICTIMS' RIGHTS

This report also rejects several provisions aimed at fighting sexual violence and increasing victims' rights. For example, this report rejects a proposal which increases the penalties for repeat rapists and child molesters. In addition, the House bill contained mandatory restitution requirements for victims of rape, child molestation, sexual exploitation, and other crime victims. The Senate bill contained mandatory restitution requirements for all crime victims. The conference report rejects both of these measures. Incredibly, this report also drops language which required HIV testing for Federal sex offenders with disclosure of the test results provided to the victim. Apparently, the privacy of an accused rapist is more important to this report's advocates than the peace of mind of a rape victim.

Mr. President, the Republicans only recently saw the conference report. It is over 500 pages long. The report has undergone numerous changes since the conference last met and contains provisions which were in neither the House nor the Senate bill. Yet, a cursory review of this measure reveals numerous other troublesome provisions which coddle criminals. For example, the bill includes a measure which will require treatment on demand for prisoners and reduces their sentence for participating. It mandates that the Department of Justice consider facilitating the interests of violent criminals by incarcerating them closer to their home. Numerous mandatory minimum penalties for serious offenses such as selling drugs to children and violent firearm crimes have been stripped from the bill. In addition, the conference report weakens measures passed by both bodies aimed at fighting terrorism. Incredibly, it also subjects individual law enforcement officers and their agencies to Federal lawsuits for violating criminals' rights. How can anyone claim this is a tough crime bill?

In closing, this so called crime bill conference report is a travesty which undermines the interests of law enforcement, prosecutors and victims. It makes promises it cannot deliver on and virtually eliminates the death penalty. It sounds tough, but it isn't. Although this bill contains many provisions which I strongly support, these provisions cannot overcome the damage the rest of the bill does to our Nation's criminal justice system.

The advocates of this liberal, pro-criminal bill will argue that they are supporting a tough crime bill. They will claim to be spending more money on law enforcement while failing to provide a means to come up with the $3 billion it promises to them. The irony here is that, according to the Attorney General, Congress failed this year to fully fund the President's budget for law enforcement, slashing it by $472 million.

This bill should be seen for what it is, a travesty. It expands the rights of criminals at the expense of the law abiding, the prosecutors, law enforcement and crime victims. The American people are demanding that the Congress pass real reform. Anything less is not acceptable. If this bill passes, the only people celebrating will be death row inmates and other violent criminals. A vote in favor of this report is a vote against the death penalty. A vote in favor of this bill is a vote against the law abiding and victims of crime.

The American people are calling for a tough crime bill which punishes those who choose a life of crime. This conference report is anything but that. For this reason, and the other reasons I have mentioned, it must be rejected.

Mr. President, I ask unanimous consent that numerous statement and letters expressing opposition to this conference report be made a part of the record immediately following my remarks. These letters include a letter from President Bush, a letter from Attorney General Barr, 31 State attorneys general and numerous prosecutors.

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

[From the Washington Times, Nov. 27, 1991]

* * * AND ON CAPITOL HILL

The tale of Henry "Little Man" James has gripped the nation's capital like few others. "I feel like killing somebody," he told his companions, who related the story to police. Police say he then went on to do just that, opening fire with a 9mm handgun and killing Patricia Diann Lexie instantly.

The police caught him, but it will hardly matter. This week in Washington a House and Senate conference committee agreed to an "Omnibus Crime Bill." Although it purports to be something different, the bill perpetuates the criminal justice status quo in this country—ensuring that people who commit crimes like the one Little Man is accused of never feel the sting of society's ultimate sanction, capital punishment.

The major issue of the crime bill has been reform in habeas corpus, the process by which capital felons appeal state death sentences in federal courts. As it now stands, convicted murderers have numerous opportunities to appeal their conviction or sentence. President Bush and congressional conservatives wanted to reform the process so that a convicted murderer would have just two fair shots at a federal appeal. According to the president's plan, originally passed by the Senate, a capital felon could appeal his conviction once on technical grounds and then again on the basic question of guilt or innocence.

But the final bill actually liberalized habeas corpus procedures. It tosses out 14 Supreme Court cases that have already imposed marginal limitations on death-penalty appeals. It allows serial appeals; it bars state courts from appointing counsels to defendants in capital cases, requiring instead that lawyers be appointed by criminal rights advocates; and it permits confessed and convicted murderers to go free if there is a technical flaw in their confession, even if the independent evidence of guilt is overwhelming.

Some Democrats, nonetheless, are trying to claim that their bill proves they are tough on crime and Mr. Bush is not. In a fatuous political provocation, the Democrats used the bill to add 50 new crimes to the list of federal capital offenses. "Although this bill purports to permit imposition of the death penalty for several new Federal offenses," Mr. Bush wrote to Sen. Bob Dole Monday, "it adopts procedures that virtually ensure the death penalty will never be imposed."

Cold-blooded murderers deserve to die. Mr. Bush shouldn't stop emphasizing this point or struggling to reestablish the legitimacy of capital punishment in the American system of justice. Capital punishment not only serves the practical purpose of permanently removing dangerous criminals from the streets, it reaffirms our faith in the moral order that makes civilized society possible. When a nation's elite loses the political will and moral courage to protect the lives of innocent people by imposing a proportional and just punishment on murderers, life becomes cheap.

If the proponents of the Omnibus Crime Bill want to know just how cheap, they can find out this evening when the shadows begin spreading across the city. They should pick any direction and try walking out 10 or 12 blocks from the Capitol, alone. Then they should remember that the late Patricia Diann Lexie was out one evening last week in a car, with her husband by her side. She at least had some reason to think she was safe.

THE WHITE HOUSE,
Washington, DC, November 25, 1991.

Hon. ROBERT DOLE,
Republican Leader, U.S. Senate, Washington, DC.

DEAR BOB: Since March, I have been calling on the Congress to pass a tough crime bill that will remove the handcuffs from law enforcement and end needless delays in the criminal justice system. For too long, the scales of justice have been tipped in favor of criminals instead of law-abiding Americans. The American people want a crime bill that will make the system tougher on criminals than it is on law enforcement and crime victims.

After months of delay, the Congress is now presented with a conference report drafted in the last hours of this session. Once again, just as they did last year, Democrat conferees from the Senate and House have demonstrated that they are willing to overlook the will of their colleagues and the American people. Clearly, the American people deserve better.

The crime bill produced by the Democrat-controlled conference is unacceptable. The bill rejects many of the primary goals the Administration set forth as necessary for an acceptable crime bill. One essential goal of our proposal is to end frivolous post-appeal challenges brought by convicted criminals, particularly death row inmates, through meaningful habeas corpus reform. By overturning critical Supreme Court decisions that have reduced the abuse of habeas corpus, the conference bill actually weakens current law by expanding a criminal's ability to frustrate the system.

Another goal of the Administration's bill is to ensure that criminals do not go free on legal technicalities when a police officer is acting in good faith. This conference report does just the opposite. Again, it retreats from current law by throwing out court decisions that recognize the legitimacy of such a good faith exception to the exclusionary rule.

Finally, although this bill purports to permit imposition of the death penalty for several new Federal offenses, it adopts procedures that virtually ensure the death penalty will never be imposed.

I will not accept any effort by the Congress to turn the clock back on the progress we have made in the courts on criminal justice reform. If this bill is presented to me, I will veto it and insist that Congress pass a crime bill that will strengthen our criminal justice system.

Sincerely,

GEORGE BUSH.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, November 25, 1991.

Hon. ROBERT DOLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR MR. MINORITY LEADER: I join men and women of law enforcement around the country and victims of crime in voicing my strenuous objections to the so-called "crime bill" reported by the House and Senate conferees this weekend. While law enforcement groups and victims of violent crime cry out for the Congress to move forward aggressively on criminal justice reform, the conferees now propose that we take a significant step backwards. The proposed legislation actually overrules several recent Supreme Court decisions favorable to law enforcement. This conference report does more for those convicted of crimes than it does for those victimized by them.

The American people know that our criminal justice system is failing because convicted criminals are able to escape just punishment through endless delays and repetitive technical legal maneuvering. This abuse has deprived our criminal justice system of any finality: convicted criminals can perpetually reopen and relitigate their cases even when their appeals have been completed and when there is no question as to their guilt. The guilty thus avoid punishment by filing frivolous habeas corpus petitions that drag on for years, consume valuable law enforcement resources, and reopen the wounds of victims and survivors. State law enforcement agencies demand relief. And yet, the conferees now propose that we actually create broad new avenues and new loopholes by which convicted criminals can exploit the system and evade punishment. The conferees propose to make the current situation worse by: (1) overruling certain reasonable limitations recently established by the Supreme Court on successive habeas corpus petitions; (2) imposing substantial costs on the states to fund these frivolous challenges while offering no prospect of finality and no relief to their already overburdened systems; and (3) offering criminals wider opportunities for continued frivolous delays than are allowed even under existing law.

The conferees also propose to step backwards on reasonable reform of the exclusionary rule. By rolling back court decisions which allow for the admissibility of evidence when police have acted in good faith, the conference report will handcuff police and increase the number of criminals who escape justice on legal technicalities.

Finally, in authorizing $3 billion for law enforcement programs the bill offers only a mirage. Authorization of this funding when there is no appropriation is essentially meaningless. The irony here is that the Congress failed this year to fully fund the President's budget request for law enforcement, slashing it by $472 million—a 64% cut in the increases sought by the President. Dangling the empty promise of more grant programs before the eyes of state law enforcement cannot camouflage a weak crime bill.

In sum, the conferees have let down law enforcement, let down victims, and let down those in Congress who voted for tough anti-crime measures. This "whirlwind weekend conference" cannot obscure the fact that the Congress has again failed to deliver on serious criminal law reform. If this bill comes to the President's desk, I will urge him to veto it.

Sincerely,

WILLIAM P. BARR.

NATIONAL DISTRICT ATTORNEYS ASSOCIATION,
Alexandria, VA, November 25, 1991.

Re. Vote on Crime Bill

Hon. GEORGE J. MITCHELL,
Hon. ROBERT DOLE,
U.S. Senate, Washington, DC.
Hon. THOMAS S. FOLEY,
Hon. ROBERT H. MICHEL,
U.S. House of Representatives, Washington, DC.

DEAR GENTLEMEN: The American people have been mugged again—this time by the leadership of the United States Congress. The nation's prosecutors strongly oppose the so-called "crime control" bill approved in Sunday's conference and urge both House and Senate to reject it. This bill does far more to advance the interests of convicted criminals than it does to protect victims and law-abiding citizens. In fact, passage of this bill is tantamount to handing the jail house keys to thousands of convicted state and federal prisoners.

The bill advances the rights of convicted criminals by providing golden opportunities for them to use new case law to overturn old convictions. This is accomplished through the repeal of several Supreme Court precedents in the habeas corpus provision approved by the conference. It also provides unworkable counsel standards in death penalty cases that violate the most basic tenets of federalism.

The conference committee in nearly every instance chose the weakest provisions with respect to law enforcement. It rejected the House limitations on application of the exclusionary rule. It overturns the Supreme Court decision in *Arizona* v. *Fulminante* through a provision that may have far reaching effects and which was not even the subject of hearings. Finally, the conference chose the weaker provisions on death penalty offenses and procedure.

It is a sad day when the will of American people to enact tougher criminal laws is so completely thwarted. We urge you to reject this poor excuse for a crime control bill.

Sincerely,

THOMAS J. CHARRON,
President.

NOVEMBER 21, 1991.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As the chief legal or law enforcement officers of our states, we

are writing to express our alarm at the habeas corpus provisions contained in H.R. 3371, as it was passed by the U.S. House of Representatives, and to urge you to veto any legislation containing those provisions.

We need legislation that will support law enforcement, promote finality of judgment, and ensure fairness to crime victims and their survivors. In spite of that need, a bare majority of the House of Representatives has passed habeas corpus provisions that would have the opposite effect. Those provisions are so inimical to law enforcement, are so unfair, and would have such a devastating effect on the interests of victims and survivors of violent crimes, that we urge you to veto any so-called anticrime bill containing any of the principal provisions relating to habeas corpus that are now found in H.R. 3371.

One of those provisions would effectively repeal the non-retroactivity doctrine of *Teague* v. *Lane*, 489 U.S. 288 (1989, and related Supreme Court decisions, thereby drastically undermining finality of judgment and increasing relitigation and delay manyfold. The House bill accomplishes this result by defining more narrowly than *Teague* the class of "new rules" that do not apply to cases on habeas review, and thus it provides more grounds for litigation after the conviction is final. The *Teague* doctrine, however, acknowledges that federal habeas corpus is not intended "to provide a mechanism for the continuing reexamination of final judgments based upon later emerging legal doctrine."[1]

Without the *Teague* doctrine, and under the House provision, Robert Alton Harris, who brutally murdered two teenagers in 1978 near San Diego, California and who confessed seven times, would be able to perpetuate his case under federal habeas corpus.[2] This House provision also overturns *Buter* v. *McKellar*.[3] These are only two examples, as any effort to undercut *Teague* would affect capital and non-capital judgments in nearly every state. Moreover, *Teague* doctrine must be viewed in the context of *Griffith* v. *Kentucky*, 479 U.S. 314 (1987). *Griffith* holds that "new rules" are always applied retroactively at any stage during direct review, i.e., before the conviction becomes final. The Senate already rejected a measure which would have undermined the *Teague* doctrine. In the event the conferees fail to follow the Senate lead, we urge you to veto any bill containing any provisions, such as those in H.R. 3371, which reverse the *Teague* non-retroactivity doctrine in any way.

Another provision of H.R. 3371 would impose draconian requirements concerning appointment, qualification, performance, and compensation of counsel in capital cases. Those provisions are so onerous, are so contrary to basic notions of federalism, and depart so significantly from what the Constitution requires, that they are obviously an attempt to indirectly impede, obstruct, or abolish capital punishment. For example, under H.R. 3371, if the state fails to satisfy each of the counsel requirements, three harsh penalties are imposed: (1) an indefinite stay of execution is granted; (2) the traditional presumption of correctness afforded to state court findings of fact is eliminated; and (30 the presentation and consideration of new claims in federal court in disregard of the well-established exhaustion and procedural default doctrines is permitted. H.R. 3371 therefore encourages "sandbagging" of state courts, disrespects comity and federalism interest, and promotes more litigation on whether the state has satisfied each of the technical counsel requirements.

In contrast, the Senate-passed legislation rejected a compulsory approach on the states and allows states to opt-in to the reforms. In this manner, the Senate bill contains the recommendation of the Powell Committee which recognized that "it is more consistent with the federal-state balance to give the States wide latitude to establish a mechanism" for the appointment of counsel.[4] In the unexpected even that any state, which opts in to the reforms, failed to promulgate an adequate appointment of counsel mechanism, the Powell Committee left that final determination with the federal judiciary.[5] We urge you to veto any so-called anti-crime bill which contains extra constitutional requirements concerning counsel in any case or class of cases, such as those provisions found in H.R. 3371.

Finally, in the name of placing reasonable limits on "successive petitions," H.R. 3371 instead promotes more, not less, litigation. H.R. 3371 is broader than the Senate-passed legislation, which is based upon the Powell Committee recommendation, because the House measure includes vague language permitting successive petitions concerning "the validity of the sentence under Federal law."

There is nothing in the habeas corpus provisions of H.R. 3371 that is favorable to any interest other than convicts' interests. Any bill containing the provisions discussed above cannot be described accurately as an anti-crime bill but would instead be a pro-criminal bill and particularly a pro-convicted murderer bill. The habeas corpus provisions contained in H.R. 3371 stand in stark contrast to those which the Senate passed in July. We do wholeheartedly support the habeas corpus provisions contained in Title XI of S. 1241. Those provisions, unlike the ones contained in H.R. 3371, would promote finality, fairness, and prompt resolution of litigation.

There are some other provisions in H.R. 3371 and in S. 1241 which would aid law enforcement and promote the interests of victims and survivors of violent crime. However, there are no provisions in either bill, and none that the Conference Committee could report out, that would justify signing into law any bill containing habeas corpus provisions similar to those contained in H.R. 3371.

We appreciate your interest in this matter and hope that, if it becomes necessary, you will exercise your veto power to protect the American people from pro-criminal legislation such as the three provisions discussed above relating to habeas corpus that are contained in H.R. 3371.

Sincerely,

Daniel E. Lungren, Attorney General, California; Mike Moore, Attorney General, Mississippi; Don Stenberg, Attorney General, Nebraska; Robert T. Stephan, Attorney General, Kansas; Marc Racicot, Attorney General, Montana; Ernest D. Preate, Jr., Attorney General, Pennsylvania; Grant Woods, Attorney General, Arizona; Charles E. Cole, Attorney General, Alaska; Elizabeth Barrett-Anderson, Attorney General, Guam; Joseph B. Meyer, Attorney General, Wyoming.

Linley E. Pearson, Attorney General, Indiana; Mary Sue Terry, Attorney General, Virginia; Robert J. del Tufo, Attorney General, New Jesey; John P. Arnold, Attorney General, New Hampshire; Dave Frohnmayer, Attorney General, Oregon; Gale A. Norton, Attorney General, Colorado; Frankie Sue del Papa, Attorney General, Nevada; James H. Evans, Attorney General, Alabama; Ken Eikenberry, Attorney General, Washington; Mark W. Barnett, Attorney General, South Dakota; Jeffrey L. Amestoy, Attorney General, Vermont; Michael J. Bowers, Attorney General, Georgia.

Larry Echohawk, Attorney General, Idaho; Richard N. Palmer, Chief State's Attorney, Connecticut; Richard P. Ieyoub, Attorney General-elect, Louisiana; Mario J. Palumbo, Attorney General, West Virginia; Lacy H. Thornburg, Attorney General, North Carolina; J. Joseph Curran, Jr., Attorney General, Maryland; T. Travis Medlock, Attorney General, South Carolina; Charles M. Oberly, III, Attorney General, Delaware; Dan Morales, Attorney General, Texas.

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
Harrisburg, PA, November 25, 1991.

Re: Habeas Corpus Provisions of H.R. 3371

DEAR MEMBER OF CONGRESS: Today you will be asked to vote on a conference report on the Crime Bill. We urge you to vote to reject this proposal.

From the states' perspective, the most important provision in this report is the reform of federal habeas corpus. This report does nothing to further that reform and is, in effect, a step backwards. The report essentially reverses a major Supreme Court ruling, *Teague v. Lane*, which discourages relitigation, successive petitions and delay, and encourages prosecutors and the public to believe that there is finality in state criminal court judgments. This report language turns back the clock. It gives the defendant new grounds for an appeal and does nothing to end frivolous and successive appeals which plague the criminal justice system and which this crime bill was intended to rectify.

The very reasons for our opposition to H.R. 3371 are the reasons we support S. 1241. We support this Senate habeas corpus reform measure because it is wrong for our government to allow a seemingly endless series of federal court appeals from state criminal convictions by murderers. The Senate bill would bring finality to those appeals; we support these changes.

This conference report is not a strong "anti-crime bill." This proposal favors the convicted murderer, revictimizes the survivors of a murder victim, and penalizes the states. We urge you to reject it.

We attach for your information a recent letter to the President signed by 31 state Attorneys General, which further explains our position.

Very truly yours,

Ernest D. Preate, Jr., Chair, Criminal Law Committee, National Association of Attorneys General.

Robert J. Del Tufo, Attorney General of New Jersey, Vice Chair, Criminal Law Committee, National Association of Attorneys General.

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[1] *Sawyer v. Smith*, 110 S. Ct. 2822, 2827 (1990).

[2] *Harris* v. *Vasquez*, No. 90-55402,—F.2d—(9th Cir. Aug. 21, 1991).

[3] 110 S. Ct. 1212 (1990).

[4] Judicial Conference of the United States, Report and Proposal of the Ad Hoc Committee on Federal Habeas Corpus in Capital Cases, at (Aug. 23, 1989).

[5] *Id.*

NOVEMBER 15, 1991.

Hon. GEORGE J. MITCHELL,
Hon. JOSEPH R. BIDEN, JR.,
U.S. Senate, Washington, DC.
Hon. THOMAS S. FOLEY,
Hon. JACK BROOKS,
U.S. House of Representatives, Washington, DC.

GENTLEMEN: As elected Democratic prosecutors from across the nation representing tens of thousands of crime victims, we call upon you for help. For months we have supported a workable crime bill designed to help the crime fighters and victims, not the criminals. We managed to get such a bill through the Senate, only to have it eviscerated in the House of Representatives. As state and local leaders of the Democratic Party, it is hard to explain to our constituencies why our Democratic leaders in Congress continually hamstring our efforts to combat crime.

The House Bill (H.R. 3371) contains several provisions which are repugnant to law enforcement efforts. If these provisions remain in the crime bill, prosecutors of both parties nationwide will ask the President to veto it, and we have every indication that the President will do so. To make the bill palatable, we urge the conference committee to adopt the Senate version, and specifically:

(1) Strike the language in Title XXI, Section 1104 that overturns existing retroactivity standards as defined in Teague v. Lane, 489 U.S. 288 (1989) and Butler v. McKellar, 110 S. Ct. 1212 (1990). The practical effect of this section would be to allow state prisoners much greater latitude in applying new legal precedents to overturn old convictions.

No conviction would ever become final. It would further aggravate the already critical problems of delay and abuse in capital cases and continue to undermine the faith of the American people in the criminal justice system.

(2) Strike or substantially modify the counsel standards for capital cases in Section 1105 of Title XI. These standards are unworkable and violate the most basic tenets of federalism. The proposal would bar state court judges from appointing counsel in capital cases. The power to appoint would be placed either in a state-wide defender organization, a death penalty resource center, or a committee of lawyers appointed by the highest court in the state. The qualifications for death penalty lawyers, beginning with two lawyers at the trial stage and on through certiorari in the U.S. Supreme Court, are so stringent that the pool of eligible counsel would be so limited as to thwart and delay death penalty litigation, not improve it. In addition, the appointment of counsel provision appears to interfer with state's rights, where eighty percent of all cases are litigated. Apparently no thought has been given to the financial obstacles in funding such an approach.

(3) Strike the language in Section 1106 that allows successive federal habeas petitions if proven facts undermine a court's confidence in the "validity" of a capital sentence under federal law. This provision is ambiguous and is an invitation to procedural abuse.

(4) Institute the same time limits and statutes of limitations for federal habeas corpus proceedings approved by the Senate in July.

In summary, these few provisions in the House bill are so damaging that we prosecutors would prefer no crime bill unless changes are made. All of us have a lot at stake in this matter. We are very close to having a good crime bill of which persons on both sides of the aisle can be proud. A lot of study, research, and effort has been expended and should not be wasted. On a more partisan note, we, as local Democratic leaders believe in the power of good government to improve and protect the quality of each citizens life, regardless or race, creed, color or socio-economic status.

Pervasive, invidious, violent crime, which strikes disproportionately at the poor and minorities is the single greatest threat to our citizens lives. Hopefully our Democratic Party will send side by side with our law-abiding citizens—*not* with convicted criminals.

Thank you for considering our views.

Sincerely,

Robert H. Macy, District Attorney, Oklahoma City, OK; Edwin L. Miller, Jr., District Attorney, San Diego County, San Diego, CA; Carl K. Kirkpatrick, District Attorney General, Kingsport, TN; Newman Flanagan, District Attorney, Suffolk County, Boston, MA; Robert E. Colville, District Attorney, Allegheny County, Pittsburgh, PA.

Michael P. Barnes, Prosecuting Attorney, St. Joseph County, South Bend, IN; William C. O'Malley, District Attorney, Plymouth County, Brockton, MA; William L. Murphy, District Attorney, Richmond County, Staten Island, NY; William E. Davis, County Attorney, Scott County, Davenport, IA; Arlo Smith, District Attorney, San Francisco County, San Francisco, CA; Arthur C. Eads, District Attorney, Bell County, Belton, TX.

Robert L. Deschamps, County Attorney, Missoula County, Missoula, MT; Stephen D. Neely, County Attorney, Pima County, Tucson, AZ; Danny E. Hill, District Attorney, Potter County, Amarillo, TX.

CONFERENCE OF CHIEF JUSTICES,
November 6, 1991.

Hon. STROM THURMOND,
U. S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THURMOND: I am writing on behalf of the Conference of Chief Justices to ask your support for adoption of the Senate habeas corpus provisions during the upcoming House-Senate Conference on the Omnibus Crime Control Act of 1991. The Senate provisions represent true reform of habeas corpus; the House provisions do not.

The Conference has expressed its position on habeas corpus reform in a number of resolutions over the last several years, the most recent having been adopted at the Conference's Forty-Third Annual Meeting in Philadelphia on August 8, 1991.

I enclose copes of the several resolutions for your consideration. As you will note, the resolutions highlight the Conference's support for the recommendations of the Powell Committee and for the preclusive effect of a full and fair adjudication of a prisoner's habeas claims by a state court.

The August 1991 resolution reaffirms the Conference's "long standing position in support of limiting federal habeas corpus in death penalty cases when state proceedings have rendered a full and fair adjudication of the claim." The resolution also makes clear that the Conference "considers the language of the Senate Judiciary Committee 'full and fair' standard as including a determination by the federal courts of whether the claim was (1) decided on the merits, (2) met a minimum standard of reasonableness, and (3) conformed to federal procedural requirements." Finally, the resolution states that the Conference expresses no opinion on any other parts of the Omnibus Crime Control Act of 1991.

I respectfully request your favorable consideration of the Conference's position and urge you to appoint to the Conference members who are serious about habeas corpus reform. If you should desire further information on the matter, please do not hesitate to call on me.

Sincerely,

HARRY L. CARRICO,
Chairman, Committee on State-Federal Relations.

CITIZENS FOR LAW AND ORDER, INC.,
Oakland, CA, November 26, 1991.

STATEMENT ON CRIME BILL CONFERENCE COMMITTEE REPORT

Our organization, together with its national coalition partners and our more than 100,000 members, stand in firm opposition to the alleged "anti-crime" bill which Senate-House conferees agreed upon Sunday evening. As concerned citizens and as victims/survivors of violent crime we reject this crime package in its entirety due to its lethal anti-victim provisions contained in its so-called habeas corpus reform provisions. These provisions attack the very heart of the criminal justice system and thus fatally infect all other sections of the conferees' crime package. Congress must reject it!

Our organization has always been convinced that genuine habeas corpus reform in capital cases is a fundamental and indispensable element in the battle against violent crime in our nation. The conferees' choice on Sunday evening of the House version of habeas reform over that of the Senate dealt a severe body-blow to the legitimate needs and concerns of our country's homicide victims/survivors. It absolutely nullifies any hope of real reform of current abuses. Furthermore, it makes the current situation worse by allowing retroactive application of Supreme Court decisions in habeas proceedings.

The worst torment that homicide survivors must endure after the loss of their loved ones is the lack of closure to grief and the lack of finality of judgment. The House version of habeas reform, adopted by the conferees on Sunday evening, does nothing to alleviate these matters but instead accentuates them. The conferees' adopted version of habeas reform now insures continued victimization and re-victimization of survivors of murdered loved ones.

True habeas reform demands time limits on Federal Court deliberations; it must mandate priority treatment for capital cases in habeas proceedings; it must restrict successive petitions to issues of guilt/innocence; it must maintain the current *Teague* v. *Lane* doctrine of non-retroactivity. Any purported reform without all these elements is a sham and a charade. The conferees' version lacks them all!

For too many years, victims/survivors have been ignored by the criminal justice system while primary focus has been directed to defendants/prisoners. Nowhere has this been more flagrant than in Federal habeas proceedings. Survivors wait for years for jury verdicts and sentences to be actualized while death-row killers abuse the system with impunity through the endless filing of baseless and repetitive appeals. This is neither fair, just, or equitable. Yet the conferees' version of habeas reform will not only perpetuate this situation, it will aggravate it! Congress must say no to this bill!

JACK COLLINS,
Eastern Regional Director, CLO.

CONCERNED CITIZENS
EQUAL JUSTICE,
Greenville, SC, September 12, 1991.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

This is to urge support of House Bill 1400. While we are all concerned about what appears to be an increase in crime in this country. We are equally concerned with encroachment on the Constitution to deal with it. The proposed Senate changes in habeus corpus places our personal liberties in jeopardy, weakens the federal court system, and increases the risk of innocent defendants being executed due to lack of adequate counsel nor review.

We urge you to actively support House 1400 habeas reform, rather than the Senate version.

Sincerely,

J.M. FLEMMING,
Chairperson.

ROBERT H. MACY,
District Attorney,
Oklahoma County, November 25, 1991.

Hon. DAVID BOREN,
U.S. Senate, Washington, DC.

DEAR SENATOR BOREN: As a veteran prosecutor with over thirty years in the criminal justice system and as President-Elect of the National District Attorney's Association, I am appalled at the action of the Conference Committee on the Crime Bill. In almost every instance, the conferees voted for the version that most favored the criminal element, not the prosecutors and victims. While pretending to pass a tough crime bill with additional application of the death penalty, the conferees included provisions which will prevent the death penalty from ever being carried out. The provisions on Habeas Corpus will perpetuate endless delays in all capital litigation. In its present form, this bill is totally unacceptable to the prosecutors of this nation.

Those of us who have dedicated our lives and careers to protecting the innocent victims of crime and prosecuting violent vicious criminals are better off under the present state of the law than we will be if this bill is enacted. On behalf of the nation's prosecutors, I respectfully request that you vote against passage of this bill.

Respectfully,

ROBERT H. MACY,
District Attorney.

NINTH CIRCUIT STATE ATTORNEYS GENERAL ASSOCIATION ON PENDING FEDERAL HABEAS CORPUS REFORM LEGISLATION—ADOPTED JUNE 17, 1991

Whereas, the Ninth Circuit State Attorneys General Association is an association of the elected Attorneys General from the nine western states within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, which is the largest federal appelate court in the nation. The states within the Ninth Circuit include Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Orgeon, and Washington;

Whereas, each of these State Attorneys General offices has an active case load and day-to-day involvement on federal habeas corpus cases in the U.S. District Courts of their respective states and in the U.S. Court of Appeals for the Ninth Circuit;

Whereas, the U.S. Congress is currently considering legislation which would reform the general federal habeas corpus process;

Whereas, seven of the states within the U.S. Court of Appeals for the Ninth Circuit have adopted procedures for the imposition of capital punishment for aggravated murder which each respective state Attorney General office has obligations to defend in Federal court. These states included Arizona, California, Idaho, Montana, Nevada, Oregon and Washington; Now, therefore, be it

Resolved, That the Ninth Circuit State Attorneys General Association, by unanimous vote of each Attorney General after evaluating the impact of pending reform legislation, including S. 19, S. 618, S. 635, and S. 1241:

(1) concludes that meaningful federal habeas corpus reform is necessary to promote the finality of state court judgments, curb repetitious and unnecessary litigation, and restore public confidence in the criminal justice process;

(2) strongly endorses the provisions of S. 635, Title II & X, as the best legislative package currently before the U.S. Senate to remedy the problems of lack of finality and unnecessary and incessant litigation currently experienced under the federal habeas corpus process;

(3) strongly urges Congress to adopt a reform package which contains general habeas corpus reforms, along the lines of S. 635, Title IIA, which includes:

(a) reasonable time limits for the filing of habeas petitions;

(b) deference to state court rulings which are the product of full and fair state adjudication; and

(c) authority for federal courts to dismiss frivolous claims when state remedies have not otherwise been exhausted;

(4) strongly endorses the full and fair adjudication standard contained in S. 635 and urge Congress to adopt for this federal standard of review the full and fair opportunity standard employed in *Stone* v. *Powell*, 428 U.S. 465, 494 (1976);

(5) strongly endorses the adoption of a statute of limitations for the filing of habeas corpus petitions, and recommends that a petitioner have 90 days to file the petition with up to a 90-day extension for a showing of good cause and that a court be required to enter a written order articulating the grounds for the good cause extension;

(6) strongly supports a provision which mandates that capital cases shall be given priority in federal court and a provision which adopts time limits for federal court review of these cases. If a federal court failed to timely act, we recommend that the automatic stay would expire so that the presumptively valid state court judgment could be enforced. Any time limits on federal appellate court review should include a 30-day time limit for a determination on whether to rehear a case or rehear a case en banc;

(7) strongly supports legislation which maintains the limits on successive petitions adopted by the U.S. Supreme Court in *McCleskey* v. *Zant*, 59 U.S.L.W. 4288 (1991) and which would build upon this standard, as proposed in S. 635;

(8) strongly supports capital case reforms which include an appointment of counsel mechanism:

(a) which is limited to post-conviction review;

(b) allows states to develop appointment of counsel standards;

(c) reserves the unitary review processes (for the simultaneous state appellate court consideration of the direct appeal and state habeas petition) for those states which have adopted such procedures;

(d) develops a mechanism which precludes repetitious litigation of the adequacy of the appointment of counsel mechanism once the mechanism has been judicially upheld or certified as adequate by a judicial or non-judicial entity;

(e) adopts a remedy for the technical or inadvertent noncompliance with any such appointment of counsel mechanism which preserves judicial determinations as long as the effective assistance of counsel was otherwise rendered;

(9) strongly supports legislation which preserves the exhaustion doctrine, which as a matter of comity, respects the integrity of state processes;

(10) strongly supports legislation which preserves the procedural default doctrine;

(11) strongly opposes any provisions which would erode or modify the non-retroactivity doctrine of *Teague* v. *Lane*, 489 U.S. 288 (1989), or otherwise expanded the two exceptions to this doctrine;

(12) supports legislation which would allow the certificate of probable cause requirement, under 28 U.S.C. §2253, to serve the screening function intended under *Barefoot* v. *Estelle*, 463 U.S. 880 (1983);

(13) strongly opposes legislation which would undercut principles of finality, disrespect state processes, and encourage repetitious litigation, such as the provisions of S. 1241 which includes undefined "miscarriage of justice" standards for successive petitions and allows new federal claims which were not raised in state court "due to the ignorance or neglect of the prisoner or counsel;"

(14) strongly opposes any habeas corpus reform package which contains any version of the so-called Racial Justice Act, which:

(a) overturns the U.S. Supreme Court decision in *McCleskey* v. *Kemp*, 481 U.S. 279 (1987);

(b) is based upon an unsound statistical premise;

(c) alters the traditional focus of our criminal justice system on whether the charged crime was committed by permitting statistics and information from unrelated cases to be considered; and

(d) most importantly, would have the practical effect of abolishing capital punishment in those states which have adopted constitutional procedures for capital punishment while doing nothing to promote racial justice.

Charles E. Cole, Attorney General, Alaska; Daniel E. Lungren, Attorney General, California; Larry Echohawk, Attorney General, Idaho; Frankie Sue Del Papa, Attorney General, Nevada; Ken Eikenberry, Attorney General, Washington; Grant Woods, Attorney General, Arizona; Warren Price, III, Attorney General, Hawaii; Marc Racicot, Attorney General, Montana; Dave Frohnmayer, Attorney General, Oregon.

THE DEPARTMENT OF LAW,
STATE OF GEORGIA,
November 25, 1991.

Hon. WYCHE FOWLER, JR.,
U.S. Senator, 204 Russell Building, Washington, DC.

Re: Conference Committee Proposals on Habeas Corpus Reform.

DEAR SENATOR FOWLER: I have just learned that on Sunday, Novemer 24, 1991, the Senate/House Conference Committee met and reported out the Conference version of the Omnibus Crime Control Bill. Insofar as habeas corpus reform issues are concerned, I understand that this Bill adopts the House version of these so-called reforms. As I have expressed on numerous occasions, in my opinion, the adoption of these House habeas corpus measures, particularly that measure

which would result in the overturning of the principles in *Teague* v. *Lane*, would have disastrous consequences insofar as the operation of the writ of habeas corpus and thus the operation of the criminal justice system.

The overruling of *Teague* insures that courts are free to apply new rules of constitutional interpretation to old cases, thus changing the rules of the game for the state long after the trial occurred and the conviction became final. This undermines the essentials of fairness to both sides as well as finality.

I urge you to attempt to defeat the House version of "habeas corpus reform," as it overturns the hard won victories and landmark court cases in this area which have already been achieved in the Courts.

Sincerely,

MICHAEL J. BOWERS,
Attorney General.

THE FOLLOWING LIST OF VICTIMS GROUPS, STATE ATTORNEYS GENERAL, DISTRICT ATTORNEYS, LOCAL LAW ENFORCEMENT AGENCIES, AND LAW ENFORCEMENT ORGANIZATIONS HAVE EXPRESSED THEIR SUPPORT FOR A TOUGH CRIME BILL

ATTORNEY GENERAL

The attorneys general of the following 31 States have called upon President Bush to veto this "pro-criminal" bill:

California, New Jersey, North Carolina, Connecticut, Idaho, Nevada, Vermont, Nebraska, Alabama, Wyoming, Alaska, South Dakota, Indiana, Virginia, South Carolina, Delaware, Mississippi, Colorado, Pennsylvania, Texas, Arizona, Montana, West Virginia, Washington, Kansas, Oregon, New Hampshire, Georgia, Guam, Maryland, and Louisiana.

THESE PROSECUTORS OPPOSE THIS "PRO-CRIMINAL" BILL WITH ITS WEAK HABEAS CORPUS REFORM

National District Attorneys Association, California District Attorneys Association, Conference of District Attorneys, Oklahoma City, Oklahoma District Attorney, San Diego, California District Attorney, Kingsport, Tennessee District Attorney, Boston, Massachusetts District Attorney, Pittsburgh, Pennsylvania District Attorney, South Bend, Indiana District Attorney, Brockton, Massachusetts District Attorney, Staten Island, New York District Attorney, Davenport, Iowa District Attorney, San Francisco, California District Attorney, Belton, Texas District Attorney, Missoula, Montana District Attorney, Tucson, Arizona District Attorney, and Amarillo, Texas District Attorney.

VICTIMS GROUPS

Concerned Citizens Equal Justice, Citizens Against Violent Crime, Memories of Victims Everywhere, The Joey Fournier Anti-Crime Committee, Survival, Inc., Justice for Murder Victims, Justice for Homicide Victims, Inc., League of Victims and Empathizers, Inc., and Citizens for Law & Order.

LAW ENFORCEMENT ORGANIZATIONS WHO OPPOSE THIS BILL'S HABEAS CORPUS AND EXCLUSIONARY RULE

National Law Enforcement Council, Fraternal Order of Police, National Troopers Coalition, National Sheriffs Association, Federal Investigators Association, Federal Criminal Investigators Association, International Narcotic Enforcement Officers Association, Airborne Law Enforcement Association, Society of Former Special Agents of the F.B.I., Commission on Accreditation for Law Enforcement Agencies, Inc., Massachusetts Association of Italian American Police Officers, Massachusetts Crime Prevention Officers Association, California Correctional Peace Officers Association, and Greater Boston Hotel Security Directors Association.

Mr. CHAFEE. Mr. President, before the Senate today is the conference report for S. 1241, the omnibus crime measure, approved by the Senate in July. I have mixed feelings about this bill; but I will give my support to it. I do so for one major reason: The inclusion of the provision, known as the Brady bill, that establishes a national 5-day waiting period for the sale or purchase of a handgun.

Frankly, I am disappointed with many aspects of the conference's work. First, the lack of the provisions on firearms. I am disappointed that both the limitations on magazine capacity and the ban on certain semiautomatic assault weapons were stricken from the bill.

To my view, these provisions make sense. I do not believe that gun controls are the sole answer to crime. But they can help. And it simply does not make sense to craft crime-fighting measures that do not include stricter controls on guns. Too many times this Nation has heard what one witness to the recent slaughter in Killen, TX, called "that terrible stillness of death." In Oklahoma, Kentucky, California, and recently in Texas and in Michigan—all over the country we have seen senseless loss of life by guns.

It is clear that we have a big problem in this country, and it is guns. We have far too many and they are too available. Stricter controls on guns simply are no sacrifice compared to the grief caused by such deaths.

That is why I am sorely disappointed that the Senate assault weapons ban was deleted from the final report. However, there is a bright note: the retention of the Brady provisions.

The Brady provisions included in this bill take us closer to the goal of preventing the senseless loss of life by ensuring that guns do not fall into the wrong hands. Pursuant to this measure, a national five-business-day waiting period before the purchase of a handgun will be established; during this time, local law enforcement will be required to carry out a background check on the prospective buyer to make sure that he or she is not a felon or other person prohibited by law from carrying a gun. Meanwhile, the Attorney General will set up a system for a national instant criminal background check that, once certified to be in place, will cause the national waiting period to be repealed.

Frankly, I would have preferred that the waiting period remain in place ad infinitum in order to provide a cooling off period for those buying a gun while in the grip of a strong emotion, or drugs or alcohol. Many individuals commit gun-related crimes in a moment of anger or rage, or when they are affected by drink or drugs. Also, persons suffering from depression are often tempted by easy accessibility to a gun to do harm to themselves or others. So I would have preferred that the waiting period be permanently established. But this is a compromise measure, and it is still a significant one that will do a great deal of good.

The fact that the waiting provisions are included in this bill is itself a tribute to the two people who have worked so hard and long for a national waiting period, and for whom the bill is named: Sarah and Jim Brady. They have logged thousands of hours over the past few years chasing down legislators, talking to them, and getting attention focussed on the bill; and their tireless efforts have paid off. My hat is off to both Jim and Sarah.

Now to the other elements of the bill. Clearly I have serious objections to the bill's death penalty provisions. I do not support capital punishment. Countless studies have shown that it does not deter would-be criminals from committing a crime. Furthermore, it is a form of punishment that can never be undone, even if the accused is later found to be innocent of the crime for which he or she was put to death.

While the conference report is better than the Senate-approved legislation, in that it does not provide for the option of capital punishment for homocides involving firearms, and does not impose the death penalty on the District of Columbia, it remains a bill chock-full of new death-eligible crimes.

I noted during last year's debate on crime that the Senate seems to want to apply the death penalty to every crime but school truancy! There are 50-odd new death-eligible crimes in this bill, and they include such so-called threats to public safety as murder of Federal egg inspectors. They also include such rare crimes as genocide and train wrecking. I fail to see how providing for the option of capital punishment for these crimes will stem street crime. I suspect that they won't, and that this exercise in toughness boils down to rhetoric, pure and simple.

Other provisions in the bill include those on the exclusionary rule, and on habeas corpus proceedings. During Senate debate, I voted against extending the good faith exception of the exclusionary rule to warrantless situations, and am pleased that the conference report holds to this view. On habeas corpus, the report's provision is noticeably different than the Senate version, and has many imperfections. This is a difficult and complex issue: how to ensure that the great writ of habeas corpus is not weakened and constitutional rights not violated, while at the same time striving to prevent costly and time-consuming abuses.

In sum, this conference report is far from perfect. To my view, there is only

one provision that I think will make a real difference to Americans, and that is the Brady bill—a bill we have been trying to pass for several congressional sessions now—and for that reason alone, I will support this measure.

Mr. HATCH. Mr. President, in February, the President sent us a strong, comprehensive crime bill. In July, this Senate passed the essential elements of the crime bill. It contained some of the finest, toughest anticrime provisions that I have seen in my 15 years in this body.

But where are those tough crime provisions today? You won't find them in this conference report.

If you want those tough anticrime provisions you will have to go get them out of the waste paper baskets of the House Judiciary Hearing Room in the Rayburn House Office Building.

This is a sham bill—a soft-on-crime bill, embodying virtually all of the objectionable provisions that responsible law enforcement agencies, prosecutors, and Attorneys General oppose.

My colleague Senator KENNEDY and my colleague Senator METZENBAUM voted for this so-called crime bill. They approved of it. And we know that they are longstanding, earnest, principled opponents of the death penalty.

Yet, the chairman of the Judiciary Committee wants to claim that the bill we are considering today is the toughest death penalty bill in years. If that is true, then why did longstanding opponents of the death penalty vote for it? Why, because this bill's obvious purposes are not to provide for an enforceable death penalty, but to make sure that there never will be one.

I do not think that these distinguished legislators were fooled into supporting a bill so opposed to their deeply held principles. And I do not think that any one in this Chamber or in the nation will be fooled either by the futile attempt to call this liberal wish list an anticrime bill.

Christmas has come early for the liberals in America. The House and Senate conferees have granted them their entire Christmas list. Just do not try to walk down the streets of your own neighborhood at night.

RETROACTIVITY PROVISION

Mr. President, this bill contains a dangerous innovation in criminal law. It is section 204 of the habeas corpus title. This section governs the retroactive effect of Supreme Court decisions.

Even though this Senate rejected a similar retroactivity provision last summer, the Senate Democratic conferees agreed to accept House-passed language on this subject.

The question of whether a decision of an appellate court shall have prospective or retroactive effect is intimately connected with the question of whether a criminal conviction can ever be final.

All habeas petitioners are prisoners whose cases are considered final. They are attempting to reopen long-finished cases.

Under current law, a defendant whose appeal is pending can generally take advantage of any recent or new court decision that is favorable to him. However, once his direct appeal is finished, and his case is considered final, he cannot avail himself of newly-announced court decisions that are designed to govern the proceedings in future cases.

This sensible rule is the only one that allows a criminal case to achieve any degree of finality. The rule, moreover, is a salutary one because it encourages the courts to develop new and more fair rules of criminal procedure free from the fear that a newly-prescribed rule will have the effect of opening the jailhouse doors.

The Miranda case is a good example of how these principles work in action. When the Supreme Court laid down new rules which all future defendants could claim, the Court specifically held that the rules would only apply prospectively. How could they have held otherwise? To say that the specific Miranda rules must have been given before the Miranda case had even been decided would have meant that virtually every prisoner in America would have had to be let out of prison. Had the Supreme Court not have possessed the power to specify that its decision would apply only prospectively, we can certainly assume that it would never have decided Miranda as it did. The same is true of Escobedo versus Illinois and any number of other leading cases in the field of criminal procedure.

But those who advocate congressionally mandated retroactivity would take this power away from the Supreme Court. They would instead give to an individual Federal district court hearing a habeas petition the power to overrule the holding of the court on the question of retroactivity. They would, moreover, allow the district court to apply new rules retroactively to criminal cases that have already become final—thus opening up for review cases that may have been settled for years or decades.

As Attorney General Thornburgh observed last year, this innovation would overrule several leading Supreme Court cases and would "resurrect the chronic problems of unpredictability and lack of reasonable finality of judgments" which those decisions put to rest—Letter of Dick Thornburgh to Senator THURMOND, March 15, 1990, page 7.

No efficient system of criminal justice can function under such an arrangement. If nothing else, the retroactivity rule contained in this bill would encourage prisoners to file repetitious petitions simply on the hope that their petition may be heard by a new district judge—one who may decide the retroactivity issue differently than the previous judge. At least under the current system, the Supreme court sets the rules and they apply nationwide.

Congressionally mandated retroactivity is not designed to achieve justice—it has two objectives: to prevent the execution of persons who have been otherwise unsuccessful in preventing the carrying out of their death sentences and, in noncapital cases, to extend and perpetuate the pernicious influence of the liberal decisions of the Warren Court.

The best thing about the Warren Court is that it came to an end. But this bill would allow key Warren Court decisions to be applied to criminal cases where even the Warren Court said they should not apply.

But there is another, more fundamental objection to congressionally legislated retroactivity. The Supreme Court's rulings on retroactivity should not be overruled by a single Federal trial judge whenever that judge determines, on whatever basis, that it is just to give the defendant the benefit of a law that the Supreme Court has ruled the defendant should not receive the benefit of. I question whether Congress even has the power to create article III courts that can overrule the decisions of the Supreme Court established by the Constitution. But, even if we do possess that power, it is clearly unwise to exercise it. The decisions of the Supreme Court must be followed by the lower Federal courts; otherwise, there will be chaos in our judicial system.

Let me illustrate how the Supreme Court's retroactivity doctrine works in practice and the benefits which flow from it. The doctrine has recently been addressed and clarified by the Supreme Court in the leading case of Teague versus Lane, February 22, 1989. There the Court reaffirmed the long-standing rule—which is also the law in most States—that newly announced rules of criminal procedure do not apply to cases that have already become final. That is the only workable standard of retroactivity in the criminal law. Congress should not now confuse a subject which the Supreme Court has so recently straightened out.

No habeas reform is worth reversing the Teague case. No habeas reform is worth reopening the long-final convictions of every prisoner in America, which is what reversing Teague will do.

Section 204 of the habeas title proposes to set up criteria by which judges not on the Supreme Court can determine that decisions of the court should have an effect directly contrary to that which the Court has concluded they should have.

That is clearly unconstitutional. The Supremacy clause of article V clearly establishes that the Supreme Court is the final arbiter of such matters, not the 700 or more federal district court judges.

More importantly, consider the precedent that this bald-faced attempt to tamper with already decided Supreme Court cases establishes. If Congress does have the power to determine when certain Supreme Court decisions shall apply and when they shall not—despite the Court having determined otherwise—then Congress will surely have the power to determine who shall be bound by those decisions, what precedential effect they shall have, or any other aspect of the holding with which it might disagree. Why don't we alter the amount of damages if we think the Court has given too little or too much? It would be no more absurd than for Congress to say, as this bill does, that Federal trial judges must follow our standards, and not the Court's standards, in deciding when the Court's decisions shall be applied prospectively and when they should be applied retroactively.

This clearly unconstitutional provision is going to be bounced quicker than any law Congress has ever previously passed. Congress simply has no power to tell the Supreme Court what its decisions mean.

Nor do we have the power to create article III courts that can overrule the decisions of the Supreme Court established by the Constitution. The decisions of the Supreme Court must be followed by the lower Federal courts; otherwise, there will be chaos in our judicial system.

Section 204 of the habeas corpus title would encourage prisoners to file repetitious petitions simply on the hope that their petition may be heard by a new district judge—one who may decide the retroactivity issue differently than the previous judge. Under current law, the Supreme Court sets the rules and they apply nationwide.

There is another important point to be made about retroactivity. If the Supreme Court cannot adopt new rules of criminal procedure that are prospective only, then it is certain the Court will be less likely to adopt new rules to control the abuses of State and local police which we all agree are essential. The Court's retroactivity doctrine is essential to the development and growth of our law of criminal procedure.

Consider the Miranda case, or Escobedo versus Illinois. Both of those cases announced unprecedented new rules of criminal procedure, but the Court specifically noted in each case that the rules were prospective only. They would apply to all cases on appeal but not to those that had already become final; meaning, of course, that Miranda violations would not provide a ground for relief on habeas corpus. How could the Court have ruled otherwise? Had it not possessed the flexibility to make Miranda prospective only, the Court's ruling in that case would have opened an unimaginable floodgate of new demands for the release of State prisoners already in confinement. The Court would never have issued the Miranda opinion had it not possessed the authority to make its new rule prospective only. We should consider what other similar unforeseen consequences to the development of the law of criminal procedure in this country may lie in store if we adopt today this revolutionary restriction on the authority of the Supreme Court.

It is difficult, I admit, to explain what the retroactivity issue is all about. But imagine how much more difficult it will be to explain to our constituents why it is that infamous criminals will be receiving new trials decades after their convictions: Does either Senator from Arizona know how he will be able satisfactorily to explain to citizens of that State why he may have voted for a provision that would probably allow the Tison Brothers to receive new trials?

How will the Senators from California explain the new trials that will be sought for Charles Manson and Sirhan Sirhan; for Juan Corona and the Hillside Strangler—new trials that will be sought and, in many cases, mandated by this bill's provision that Supreme Court cases never before considered relevant to their trials now must be applied to give them new rights.

I know that I cannot now explain to my own constituents why it is that one man, William Andrews, has been on death row in Utah for 17 years. The whole point of starting this habeas debate was to shorten the ordeal for my State and for the victims of Andrews' unspeakable crimes.

But section 204—the retroactivity provision—makes the Andrews prosecutors go back to square one. To start all over again.

This is not mere conjecture on my part. Just last year, Andrews' defense attorney announced that he would be asking a Federal court in Utah to free Andrews based on a recently decided 1991 Supreme Court case relating to the composition of juries.

The Supreme Court has already held that this 1991 decision does not apply to persons such as Andrews who were convicted in 1974. Therefore, we know that Andrews will not succeed in being freed from his death sentence on this basis—or do we?

If the bill before this body today is passed, then it is a whole new ball game for William Andrews; it is a whole new ball game for the Charles Mansons and Ted Bundys of the world. This bill tells them that their cases will never be over, so long as the Supreme Court continues to issue new opinions.

Before we get lost in the abstractions of habeas corpus law, before we wear out our hands wringing them over the supposed constitutional rights of vicious murderers, we need to remember the real consequences of serious criminal cases—the deaths, the shattered lives of those left behind, the families who must go on without their fathers or other loved ones.

Most importantly, for today, we must understand how these cases will continue to blight peoples' lives if the retroactivity provision of the conference report, section 204, becomes law.

William Andrews continues to appeal his sentence and has so far succeeded in delaying his execution for 17 years.

But today, at last, the end is in sight. But not if we are so unwise as to pass the conference report. If the retroactivity provision of this bill passes, the Andrews case will never end. Of that I am certain.

In 17 years of appeal, William Andrews has not raised one single meritorious issue on appeal. Not one. But the supporters of this bill now propose to allow Andrews to go back in time to 1978, when his criminal conviction became final, to let him see if he can't find one more case, one more argument, one more chance to avoid his death sentence.

The proposed repeal of the Supreme Court's retroactivity cases is the greatest gift to prison inmates in America—and it applies to all State prisoners—that has ever been proposed.

That's why the President will veto it. That is why every attorney general of every State that I know of opposes it.

That is why on June 25, 1991, 16 of the elected State attorneys of the State of Florida wrote their Senators, urging them not to vote for any amendment that would repeal or restrict the Supreme Court decision in Teague versus Lane.

Only one habeas amendment considered by this body met the criteria for their support—it was the habeas title of S. 1241 that now lies in the trash bin of the Judiciary Committee conference room, replaced by the entirely unacceptable House habeas provisions.

Mr. President, since 1976, over 3,000 persons have been sentenced to death row, yet only slightly more than 100 of these sentences have been carried out. I am continuously asked by Utah citizens, in letters too numerous to count, what is going on here? What is wrong with our criminal justice system? Well, I think we all know what is wrong—it is the Federal habeas corpus system.

We all know what is wrong—we all know how to fix it. And if we do not know then we've got the attorney generals, the prosecutors, and the law enforcement personnel of virtually every jurisdiction on record to tell us.

They all say one thing: pass habeas reform, but do not overturn the good decisions of the Supreme Court. Do not let the House liberals overturn Teague versus Lane and reopen cases that have been closed for decades.

If any Senator today has any question about whether this conference re-

port is truly a crime bill, they do not have to take my word on it. Call your own State's attorney general and ask him or her. They know the issue, and I am confident as to what their response will be. They know this is no crime bill and that is what most will tell you—Democrat and Republican alike.

I hope, Mr. President, that at sometime in the future I may finally provide a favorable answer to my constituents who ask what is wrong with the criminal justice system. I hope I can someday finally tell them that Congress has acted to end the absurdity of endless 15- and 18-year appeals.

I certainly hope that I do not have to tell them that Congress has actually acted to make things worse by passing the conference report. I know that I will never be able to explain that one to them.

Reversing Teague versus Lane, as the conference report does, will be the greatest gift to prison inmates in years. Every convict will immediately want to subscribe to U.S. Law Week, so that on Monday mornings he or she can look to see what new decisions have been handed down by the Supreme Court—what new case can be cited in a new habeas petition seeking release from jail and return to the streets.

This issue is not about whether State prisoners are to have one bite of the apple. Every convicted prisoner gets eight or nine bites of the apple on direct appeal and through State postconviction procedures before he even turns to Federal habeas.

William Andrews has already received 27 bites—but the crime bill conferees have decided to give him just as many chances to appeal again. Reversing the Supreme Court's retroactivity decisions will, in effect, allow William Andrews to start his appeals all over again.

I will allow convicted prisoners a second bite of the apple, and a tenth bite too. But I will not give them the whole orchard as the conference report does.

Let us be frank about what is going on here. My friends on the other side of the aisle calculated that they could throw anything they want into a bill, slap the word crime on the cover, and that the President would sign it. They realized that the President would recognize it as a procriminal anticrime bill, but they were gambling that he would not be able to explain to the American people the important but somewhat technical reasons why this is so.

Well, it may be true that the statutory changes in the habeas statute that the President and I so strongly object to are obscure, but the effects of those changes are easily understood by anyone. In fact, those changes present very simple direct questions such as the following:

Do you think that Charles Manson, who was sentenced to death in the late 1960's, should be given new rights to file new appeals at this time?

That is a very simple question. So is this one: Do you think that Richard Speck, who was sentenced to death for murdering eight nurses in Chicago in 1966, should be given new rights to reopen his case at this time? How do the Senators from Illinois feel about that one—I am sure that their constituents would like to know.

If you think that these brutal murderers, as well as their cohorts on the Nation's death rows, should be given such new rights, then vote for the conference report. If you do not, then oppose it and demand from the Senate conferees that they stand by the strong habeas bill that passed this body by a 20-vote margin last July.

By all means, if you want to open up new unlimited avenues of appeal for all felons in America, here is your chance: The conference report provides a golden opportunity. But if you are truly interested in dealing with the crisis of endless appeals and the resulting misdirection of our Nation's crime-fighting resources, then join me in opposing this pernicious bill.

THE SO-CALLED VIOLENT CRIME CONTROL ACT

Mr. SEYMOUR. Mr. President, the 311 inmates on California's death row can sleep easy tonight. The majority party presiding over the crime bill conference committee has insured that these heinous criminals will have numerous—or I should say endless—opportunities to delay their sentences.

For more than 5 years, leaders of criminal justice reform have attempted to make sense out of our Federal habeas corpus process. As my colleagues know, this process is designed to ensure an individual has received a fair trial, but it also works to encourage never-ending appeals that delay the imposition of the death penalty and prolong the agony that families and friends of crime victims are forced to endure. In July 1990, a bipartisan majority of the Senate passed a comprehensive crime bill that included meaningful reform of the habeas corpus process—reform based largely on the recommendations of the reform commission chaired by retired Supreme Court Justice Lewis Powell. However, the Democrats scuttled these reforms at the 11th hour of the 101st Congress.

We took up crime legislation again this year to finish the job, to finally enact habeas reform that ensures finality in the criminal justice system, and ends the years of frivolous appeals that is at the heart of the public's lack of faith in the criminal justice system.

Californians have reason to be of little faith. Since the Supreme Court reversed its previous decision on the constitutionality of capital punishment in 1976, not one single condemned criminal has realized the full extent of the sentence imposed by a jury of his peers. In fact, nationally only 3 percent of all those sentenced to death since 1976 have been executed—3 percent.

Californians have more than lost faith. They are fed up. Frankly, so am I. Overwhelming majorities of Californians have passed countless initiatives that reaffirm their support of capital punishment. They even have ousted two State associate justices and the chief justice of the California Supreme Court largely because of their refusal to effectively enforce capital punishment. And now the majority of the crime conference committee rightly deserves the scorn of law-abiding Californians because they have single-handedly denied my State the ability to truly enforce capital punishment.

Earlier this year, Californians had reason to be hopeful that Congress finally would reform the habeas system. For the second consecutive year, a bipartisan majority in the Senate passed effective habeas reform. However, the House of Representatives darkened their hopes and enacted so-called habeas reform that would actually be even worse than current law.

If there was any doubt that members of the majority were really serious about enacting true habeas reform, it ended last Sunday, when the majority steamrolled a conference report that contained the House habeas corpus provisions.

Just how bad is the House's habeas reform proposal?

Bad enough to reverse 14 years of responsible Supreme Court decisions, including the landmark Teague ruling, that limit endless delays and frivolous appeals in death penalty cases.

Bad enough to allow condemned prisoners to delay a full year before applying for Federal habeas corpus.

Bad enough to reject the Senate's proposal that habeas petitions for condemned criminals be limited to new claims that have not been "fully and fairly" heard in State courts.

More importantly, bad enough to contain enough loopholes, legal trapdoors, and other broad definitions that promote new, unnecessary litigation, rather than finality and fairness.

Despite all of this, Democrats will continue to claim they've offered comprehensive reform of the habeas system.

Reform for who? Law enforcement? The leaders of law enforcement certainly do not think so. In fact, 31 of the Nation's 50 attorneys-general signed a letter to the President urging him to veto any crime bill that contains the House's habeas provisions.

Let me repeat that: More than a majority of the State's chief law enforcement officers in the Nation—16 Republicans and 15 Democrats—concluded that this so-called reform bill is a sham. In fact, California's top cop, Attorney General Dan Lungren, called the conference report "a fraud on the people of California and most particu-

larly on the crime victims of the State of California." Mr. President, I will ask unanimous consent that the remarks of the attorney general be placed in the RECORD following my remarks.

Furthermore, every district attorney in my State wrote to the California congressional delegation in an unprecedented, bipartisan show of support for the Senate's habeas reform provisions and strong opposition to the pseudo-reforms offered by the majority in the House.

Let me repeat that: Every single one of my State's 58 leading law enforcement officials wrote to me and my California colleagues to state that the Senate passed the true reform bill. I have a copy of this letter and I will ask unanimous consent that a copy of the California district attorney's letter be printed in the RECORD following my remarks.

I have also heard from local prosecutors, police chiefs, sheriffs, and members of rank and file law enforcement—the men and women on the front lines of violent crime—and they are virtually united in their support for the Senate's provisions.

So let us be clear about the rhetoric that is being passed around here. The Democrats are not reforming the habeas process. They are deforming it. Indeed, the Democrats are not kidding when they say theirs is a tough crime bill. The problem is it is tough on law enforcement.

That is why I cannot vote for this conference report. Though it contains some measures that enhance existing law or create new anticrime programs, this conference report loses sight of why we considered crime legislation in the first place. We were to finish the job of the 101st Congress and pass a bill to restore the Federal death penalty and reform the habeas process. Yes, this bill authorizes the death penalty for more than 50 Federal crimes. And many Democrats—some for the first time—can go back to their districts and say they supported a bill that has a death penalty. They'll say: I can be tough on crime, too." Well, do not be fooled by these anticrime wannabes. This conference report may have a death penalty on paper, but without true reform of the habeas system, we can never have a death penalty in fact.

The people of California know this all too well. We have had a death penalty on paper for years, but never-ending, often-frivolous habeas appeals have made the death penalty nonexistent.

In fact, absent true habeas reform, the phrase "capital punishment" is liberalspeak for "life in prison."

And nothing in this conference report will change that. An analysis of the habeas provisions in this conference conducted by Attorney-General Lungren concluded that these provisions hardly can be called reform. In fact, he concluded that these provisions would actually promote more litigation, more delays, more frivilous abuses of our criminal justice system than current law. And his conclusions are shared by a majority of his fellow State attorneys general.

In short, Mr. President, this conference report does not lend a hand to law enforcement. It handcuffs law enforcement.

Our State has a living symbol of this tragic problem: Robert Alton Harris. My colleagues have heard his story before. I do not think a majority of the conference committee listened. In 1978, Robert Alton Harris brutally murdered two youths in San Diego. He not only confessed to his crime, he laughed about it. No remorse, Mr. President, for the vicious crimes he committed. But for more than 10 years, Mr. Harris has effectively used the Federal habeas process to delay his sentence. He has delayed his execution for more than 10 years. He has abused a process designed to ensure fairness. No doubt, he has not stopped laughing. This conference report gives this murderer one more reason to laugh at this system.

Harris' story is more than enough to demonstrate the need for the Senate's habeas reforms—reforms that have bipartisan support; reforms that are overwhelmingly supported by law-enforcement; reforms that should not have been rejected. The conference report's habeas procedures will not bring Harris and other thugs any closer to execution than current law. Even a majority of State attorneys-general concluded that Robert Alton Harris "would be able to perpetutate his case under the Federal habeas corpus."

So how can I or any of my colleagues in good conscience vote for this conference report when it fails to achieve what we set out to do? How can I explain my vote to crime victims' friends and family members who for years have been calling for finality and fairness to this process when this legislation falls far short of that goal?

Therefore, let me make this clear. A vote for this crime bill is a vote for business as usual—for delays and frivolous litigation. A vote for this crime bill is a vote to deform, not reform, our criminal justice system. A vote for this crime bill is a vote to effectively deny a State's ability to enforce the death penalty. A vote for this crime bill is a vote to prolong the agony that plagues victims' friends and family. A vote for this crime bill is a vote to insure that the number one cause of death for condemned criminals like Robert Alton Harris will continue to be old age.

The American people will not be fooled by the efforts of some Democrats to draft foolhardy legislation and call it a crime bill compromise. Sure it is a compromise. Law enforcement, crime victims' survivors, and law-abiding citizens—all are compromised by this conference report.

Let us not send this bill to the President. Why waste time? Let us send it back to the conference committee. After all, their job was to reach an agreement on comprehensive legislation that helps, not handcuffs, law enforcement in their fight against violent criminals.

Their job is not finished.

I ask that the material to which I referred be printed in the RECORD.

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

FEDERAL CRIME BILL A FRAUD, LUNGREN SAYS

SACRAMENTO.—At a Capitol news conference today, Attorney General Dan Lungren called on President Bush to veto the federal crime bill that was reported out of a conference committee in Washington yesterday. Lungren criticized the conference committee for adopting, in a hasty three-hour closed session, provisions that would extend the ability of death row inmates to delay and relitigate their cases, making a situation already in need of reform much worse.

The Attorney General's Statement to Capitol reporters follows:

"I feel duty bound to inform you of probably the greatest fraud that I have seen in my first year as Attorney General and frankly, in my ten years as a member of Congress. The Federal Crime Bill produced by the Conference Committee late yesterday is a fraud on the people of the State of California and most particularly on the crime victims of the State of California. In fact, this legislation, in its current form, is a slap in the face of all victims.

"The voters of California may have removed Rose Bird from the California Supreme Court but the spirit of Rose Bird is alive and well in the Halls of Congress.

"Accordingly, I have today personally contacted the White House to urge the President to veto this shameless bill. This bill does nothing to assist with the problem of violent crime in the United States. Rather, it is a retreat from law enforcement's efforts to do something about violent crime. It is a major retreat in the area of habeas corpus because it overturns approximately 15 U.S. Supreme Court decisions including the most important one, the Teague case.

"This has a direct application to those of us in California, specifically in death penalty cases and in the Robert Alton Harris case. It looked like we were seeing some light at the end of the tunnel in the Harris case. We thought we might finally have the judgment of the people of California carried out. Now, we see this shameless Crime Bill coming out of the Congress of the United States.

"There is really nothing positive one can say in support of this bill in its current form. This legislation would impact California more dramatically than any other state in the union. It is time that the people of California know how their Representatives voted on this matter. They ought to ask Representatives Matsui, Fazio, Pelosi, Boxer, Miller, Dellums, Stark, Edwards, Lantos, Mineta, Panetta, Beilenson, Waxman, Roybal, Berman, Levine, Dixon, Waters, Dymally, Anderson and Torres why they have voted for the habeas corpus provisions now contained in the conference report.

"I have respect for members of Congress who are against the dealth penalty and say that up front. But it is very difficult to accept people who at home say they are for the

death penalty and vote continually in the Halls of Congress to make sure it is impossible to have the death penalty carried out in California or anywhere else.

"We are not going to stand for this in California. We have urged the President to send a veto message as soon as possible. The stories that have come out of Washington so far have suggested that this is a tough crime bill. This is not a tough crime bill, this is not even a soft-time crime bill. This is a pro-convicted murderer bill."

Lungren, along with 30 of his colleagues from other states, sent President Bush a letter on November 22, detailing their serious concerns about the House version of the crime bill and urging the President to veto any bill containing habeas corpus provisions that will allow convicted death row inmates to delay and relitigate their cases.

All 58 district attorneys in California have also joined Lungren in support of reasonable habeas corpus reforms. In addition, today the National District Attorneys Association blasted the bill reported out of the conference committee as a "poor excuse for a crime bill," which "does far more to advance the interests of convicted criminals than it does to protect the victims and law-abiding citizens."

STATE OF CALIFORNIA,
OFFICE OF THE ATTORNEY GENERAL,
September 20, 1991.

DEAR CALIFORNIA CONGRESSIONAL DELEGATION MEMBER: Collectively, as the Attorney General and as District Attorneys from each of the 58 counties in California, we handle every aspect of a criminal case, including the trial, appeal and habeas corpus proceedings in state and federal court. Because of the effect federal habeas corpus reform has on our operations and the State of California, we are sending you this joint letter to stress the urgency of congressional action and to request your support for meaningful federal habeas corpus reform.

It is now beyond any doubt that the habeas corpus process is in dire need of reform. Unnecessary delay and repetitious litigation permitted under our habeas corpus process has resulted in a lack of finality in our criminal justice system. In turn, this has caused a loss of public confidence in the ability of our criminal process to impart fair and certain justice. Further, under the current process, reasonable state court determinations are not accorded due deference in federal court and the deterrent effect of the death penalty and other criminal punishment has been blunted.

It is no wonder that the calls for federal habeas corpus reform have been heard from all levels of state and federal government. On March 13, 1991, President George Bush asked that within 100 days, Congress pass his omnibus crime bill, which contains habeas corpus reforms. Former U.S. Supreme Court Justice Lewis F. Powell, Jr., has chaired a committee, consisting of other federal judges, which proposed specific reform recommendations which now provide the primary framework for congressional legislation. In his last Year-End Report of the Federal Judiciary, Chief Justice William H. Rehnquist asked Congress to "give serious attention to badly needed reforms in this area, with a view to assuring counsel to capital defendants and assuring to the states the necessary degree of finality, in federal habeas proceedings." California Supreme Court Chief Justice Malcolm M. Lucas has stressed the need for reform as cochairman of the American Bar Association Task Force on Death Penalty Habeas Corpus and in other statements. In March of this year, former state legislator and judge and now U.S. Supreme Court Justice Sandra Day O'Connor noted the need for reform in a speech at the Crime Summit in Washington, D.C. California Governor Pete Wilson emphasized reform in his State of the State Address and, more recently, made it the subject of his weekly radio address. On May 23, 1991, and July 29, 1991, the California District Attorneys Association Board of Directors unanimously adopted three resolutions urging the California congressional delegation to adopt habeas corpus reforms similar to those included in H.R. 1400, Titles II & X, and S. 1241, Title XI & §4923. On June 17, 1991, more than half the state Attorneys General sent a joint letter to members of the U.S. Senate Judiciary Committee supporting the reform provisions contained in these measures. Also on June 17, 1991, the Ninth Circuit State Attorneys General Association, consisting of state Attorneys General from the nine western states, also adopted a unanimous resolution urging Congress to adopt habeas corpus reforms and supporting these bills. On July 11, 1991, the Senate adopted meaningful habeas corpus reforms by a substantial, bipartisan vote in S. 1241 Title XI & §4923.

With so much agreement on the need for reform, the key public policy question before the House of Representatives is what specific reform provision should be adopted. At a minimum, we believe meaningful habeas corpus reform should include:

(1) An appointment of counsel mechanism which preserves the California unitary review process and permits states to determine competent counsel standards for post-conviction review;

(2) Provisions which retain and build upon the rational limits on successive petitions recently recognized by the U.S. Supreme Court;

(3) A standard of federal court review which respects "full and fair adjudications" in state courts;

(4) Reasonable time limits for the filing of a habeas petition and for the determination of a petition in federal court; and

(5) General habeas corpus reforms (similar to H.R. 1400, Title II(A), and S. 1241, Title XI(A)).

These reforms are required because they restore reasonableness to our criminal justice process. Further, the deterrent effects of criminal punishment can be reinstated by these reforms which ensure finality to state court judgments.

Significantly, relief under the statutory writ of habeas corpus is not eliminated by the adoption of these reforms. Instead, a state prisoner is guaranteed one full, fair and adequate round of post-conviction review. Any subsequent review will be permitted whenever a showing of factual innocence is made. Appropriate time limits also ensure that federal review will not be unduly postponed by the filing or judicial consideration of the petition.

We oppose legislation which would add or promote unnecessary delay and repetitious litigation to the criminal justice system. We are also against any measure which would effectively abolish the death penalty, such as H.R. 2851, The Fairness in Death Sentencing Act (formerly entitled the "Racial Justice Act"). This legislation would permit a claim of discrimination based upon a statistical showing on the prosecutor. We believe this statistical approach is unsound and detracts from the traditional criminal justice focus on the particular circumstances of whether the individual committed the charged crime. Finally, we oppose any effort to undermine the non-retroactively rule of *Teague* v. *Lane*, 489 U.S. 288 (1989). Newly established judicial rules are and should be applied during direct review; they should not be applied for the first time on collateral review, as the U.S. Supreme Court has repeatedly recognized.

We also wish to stress that the current habeas corpus reform proposals do not affect the Great Writ in the Constitution. To the contrary, as Justice Powell and others have noted, the reforms involve the non-constitutional post-conviction remedy first adopted by the Congress in 1876. Since habeas corpus reform is a statutory matter, we look to Congress to adopt these reasonable and long overdue reforms. Concomitantly, only Congress has the power to restore reasonableness to and public confidence in our criminal justice system. We urge your action and support for meaningful habeas corpus reform along the lines of the reform provisions contained in H.R. 1400 during this session of Congress.

Sincerely,

Daniel E. Lungren, Attorney General;
John E. Martin, County of Calaveras;
John J. Meehan, County of Alameda;
Henry G. Murdock, County of Alpine;
Larry Dixon, County of Amador;
Michael L. Ramsey, County of Butte;
John R. Poyner, County of Colusa
Mike Nail, President, 1990-91, California District Attorneys Association and District Attorney, Solano County;
Gary T. Yancey, County of Contra Costa;
William A. Cornell II, County of Del Norte;
Walter J. Miller, County of El Dorado;
Edward Hunt, County of Fresno;
Robert Holzapfel, County of Glenn;
Terry R. Farmer, County of Humboldt;
William E. Jaynes, County of Imperial;
L.H. Gibbons, County of Inyo;
Edward R. Jagels, President, 1991-92, California District Attorneys Association, County of Kern;
Garry R. Consalves, County of Kings;
Steve Hedstrom, County of Lake;
Mark Nareau, County of Lassen;
Ira Reiner, County of Los Angeles;
David Minier, County of Madera;
Jerry Herman, County of Marin;
George Griffith, County of Mariposa;
Susan Massini, County of Mendocino
Gordon Spencer, County of Merced;
Ruth Sorensen, County of Modoc;
Stan Eller, County of Mono;
Dean Flippo, County of Monterey;
Anthony Perez, County of Napa;
Mike Ferguson, County of Nevada;
Michael Capizzi, County of Orange;
Paul Richardson, County of Placer;
Mike Crane, County of Plumas;
Grover C. Trask II, County of Riverside;
Steve White, County of Sacramento;
Harry J. Damkar, County of San Benito;
Dennis Kottmeier, County of San Bernardino;
Edwin L. Miller, County of San Diego;
Arlo Smith, County of San Francisco;
John Phillips, County of San Joaquin;
Barry LaBarbera, County of San Luis Obispo;
James P. Fox, County of San Mateo;
Thomas W. Sneddon, Jr., County of Santa Barbara;
George Kennedy, County of Santa Clara;
Arthur Danner, County of Santa Cruz;
Dennis Sheehy, County of Shasta;
Wesley Travis, County of Sierra;
Pete Knoll, County of Siskiyou;
Gene L. Tunney, County of Sonoma;

Donald N. Stahl, County of Stanislaus;
Carl V. Admas, County of Sutter;
Thomas Hilligan, County of Tehama;
David L. Cross, County of Trinity;
Gerald F. Sevier, County of Tulare;
Eric Du Temple, County of Tuolumne;
Michael Bradbury, County of Ventura;
David C. Henderson, County of Yolo; and
Charles O'Rourke, County of Yuba.

THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1991

Mr. SPECTER. Mr. President, for the second time in 2 years, we are confronted with complex and technical anticrime legislation reported by a conference committee in the waning hours of a session. The 1990 anticrime bill conference had dropped many of the most contentious provisions even though versions of many of them had passed both Houses. Even though many of the toughest provisions were dropped from last year's bill, I was able to support it. Regrettably, I am unable to support this conference report. In any event, I am opposed to cloture at this time. So that extensive debate is necessary at a minimum.

As far as I am concerned, the core issue on this bill is how we handle Federal intervention in State capital cases, which means that we must make meaningful reform to the process of Federal court review of State death sentences under habeas corpus petitions.

The death penalty is a vital and valuable tool of law enforcement. Based on my long experience as an assistant district attorney and then as district attorney of Philadelphia, I am convinced that the death penalty is a deterrent to violent crime.

Unless and until we make meaningful reform in Federal habeas corpus procedures, however, the imposition of the death penalty will be delayed interminably by Federal judicial intervention. These delays have made the death penalty, the most severe sanction a society can impose, the laughing stock of the criminal justice system. Endless delays in Federal court and the constant bucking of habeas corpus cases between State and Federal judicial systems for as many as 18 years, leads to disrespect for the death penalty and ultimately the entire criminal justice system.

For many years, we have been struggling to reform habeas corpus to make Federal intervention in State criminal convictions fairer, less onerous to the States, and more sensible. I believe that last year the Senate passed a sensible approach when it adopted an amendment I had coauthored with Senator THURMOND. I think that the reforms proposed in that legislation would reduce delay and make the process fairer to petitioners.

First, any reform proposal needs to impose strict time limits on the filing of habeas corpus petitions and on the time for Federal court consideration of these petitions. Both the Specter-Thurmond amendment of last year and the provisions of the Senate-passed habeas reform in S. 1241 this year contained such time limits. Counsel for the petitioners and for the State must be prepared to give these cases priority. It is not too much to demand that counsel be prepared to move forward on these cases with dispatch. Likewise, the courts must be prepared to advance capital habeas petitions to the top of their dockets and to give them the highest priority. Imposing stringent time limits on all actors in the process would go a long way to reducing the delays.

Next, comprehensive and sensible habeas corpus reform ought to mandate or encourage the elimination of State post-conviction proceedings as a prerequisite for getting into Federal court. From personal experience, I do not believe that State postconviction review is ever truly effective. Typically, in Pennsylvania, the matter is heard by the same judge who tried the case and who has already ruled on postverdict motions. Then, the appeal in the State system goes back to State supreme court, which would have already upheld the conviction once. Only one issue typically cannot be raised on direct review, and that is the adequacy of trial counsel.

The answer, it seems to me, is to require or at least encourage States to adopt the unitary review procedure followed by California, in which a convicted defendant files a petition for postconviction relief prior to the direct appeal being heard. During the consideration of this petition, the State trial court may consider a claim of ineffective assistance of counsel. An appeal from a denial of that claim can then be consolidated with the direct appeal.

Allowing Federal intervention after one direct appeal through the State judiciary in which all issues are presented would do away with much of the confusion that exists from the current exhaustion doctrine. No finer example of the ridiculous state of the law on this issue can be found than Peoples versus Castille. In Peoples, a defendant in a noncapital case, raised an issue for the first time in a direct appeal to the Pennsylvania Supreme Court for discretionary review. That court denied review without stating reasons. The defendant then sought habeas relief. The matter went all the way to the Supreme Court, which decided that the claim had not been exhausted because the reasons for the Pennsylvania Supreme Court's denial of review were not stated, thus making it impossible to determine whether the issue had been adjudicated in the State courts. This ping-pong game between State and Federal courts must stop, even if it means encroaching on States' authority to correct the errors of their own courts. In the long run, allowing early Federal intervention, but allowing it only once, will improve rather than detract from Federal-State comity.

After a single appeal through the State judiciary in which all issues are presented for adjudication, a petitioner should get one review through Federal habeas corpus relief at which all issues can be raised. Thus, I do not accept a narrow reading of the Senate-passed bill's preclusion of Federal habeas relief if a claim has received a full and fair adjudication in the State courts. Everyone sentenced to death in a State court is entitled to have all constitutional claims affecting his conviction and sentence fully adjudicated once, but only once, in Federal court.

After a petition for habeas corpus is denied, successive petitions ought not be permitted except for the most compelling reasons, such as newly discovered evidence that undermines the court's confidence in the defendant's guilt, that could not have been obtained at the time of trial through the exercise of due diligence. Successive petitions should be permitted only by leave of the circuit court of appeals.

If we establish tight timeframes for filing petitions and for their consideration and do not allow successive petitions to be filed, one of the most vexing issues becomes much less important. The issue that has caused the greatest amount of debate on this issue is the retroactive applicability of new constitutional rules created by the Supreme Court during the now-lengthy pendency of habeas corpus petitions. Under existing law, it takes years to conclude these proceedings, and courts frequently create new constitutional rights in the interim. In 1989, however, the Supreme Court severely restricted the ability of habeas corpus petitioners to take advantage of new constitutional rights in Teague versus Lane.

Of course, a strict timetable on habeas petitions alleviates this problem. It is unconscionable to carry out the death penalty where that result might be altered had a constitutional right created by an intervening Supreme Court decision been applied. The Specter-Thurmond amendment, which was adopted by the Senate in 1990, struck the right balance.

Finally, if the process is to work smoothly and to ensure a full and fair exposition of all issues at trial, on appeal, and during the presentation of the habeas corpus petition, I believe that comprehensive reform requires that competent counsel be provided to indigent defendants at all stages of the process, from trial through habeas review.

Last year's Specter-Thurmond amendment and my bill this year, S. 19, would have accomplished the goals I have outlined. It represents what I believe to be a commonsense approach to habeas corpus reform. I supported the Senate-passed habeas reform proposal because in most respects I supported

its provisions. I was deeply concerned, however, about the restriction of habeas review when an issue had received a full and fair adjudication in the State courts.

I regret not being able to support the habeas reform proposal in the conference report. The conference report does not establish a sufficiently strict timetable for filing the habeas petition. It includes no time limits on Federal court consideration of capital habeas petitions. It would leave the law unclear on successive petitions.

This conference report does not reform the elements of current habeas corpus law that are most in need of reform: the delay and the ping-ponging of cases between State and Federal courts.

Mr. President, I am prepared to keep on trying to reform habeas corpus practice until we get it right. I do not think that this conference report gets it right. Although there are other important issues—some of which I agree with and others of which I disagree—the habeas corpus issue is so important that the bill should be rejected so that we do get it right in reconsideration.

Mr. GRASSLEY. Mr. President, despite my high personal regard for my Senate colleagues on both sides of the aisle who worked on this conference report, I rise in strong opposition to the crime bill conference report.

My strong feelings against this product are in no way a commentary against the hard work and effort expended.

Indeed, I regret that I was not permitted to join the conference.

This is not a crime bill, although it is a crime. The majority of the conferees simply adopted whichever body's provision on a particular area was weaker. Just as the Holy Roman Empire was neither holy, Roman, nor an empire, this Crime Control Act has little to do with crime, provides precious little control, and even less action.

The report does skillfully exploit a situation—the end-of-the-session need for the Democrats to pass something for public relations purposes to blunt a Presidential attack on a Congress that is not interested in fighting crime. It would be a cruel hoax to pass this ineffectual bill.

This report fails to protect the first civil right of every American: To be free—in person, in home, and in the neighborhood—from the threat of violent crime. How does this bill fail to do that?

Mr. President, let me count the ways.

There is no reform of Federal habeas corpus procedures. This means that lengthy, spurious, and repetitious claims by inmates will continue to thwart the imposition of valid State death penalties. The fact is—the death penalties supposedly created by one hand of this bill are taken away with the other. Year after year, overzealous lawyers will essentially defeat the death penalty by delaying its imposition, turning a death sentence into a life sentence combined with endless petition filings.

The conferees could have remedied the situation by adopting Senate language that would have provided one chance for habeas corpus, with limited exceptions. The Senate language also would have confined habeas petitions to claims that were not fully and fairly considered by State courts. In addition, the Senate bill would have eliminated the exhaustion of State remedies requirements, permitting Federal courts to dismiss frivolous claims as they arose, rather than seeing the same petition many times until exhaustion was completed.

But the conferees were interested only in the weaker House bill. That bill contained none of these reforms. In fact, the House bill adopted by the conferees is worse than current law. It would permit prisoners to apply new decisions retroactively to their case. No matter how irrelevant or trivial, those cases will produce a flood of new petitions. This is not only unfair from a legal perspective, but it also will lead to prisoners filing new petitions forever. Yogi Berra may have said, "It's never over til it's over," but then he never filed a habeas petition.

Under this bill, habeas corpus will never be over. The convicted criminal will never be stopped from filing petitions, and the criminals' victims and their families will never heal their wounds.

This bill creates no good-faith exception to the judge-made exclusionary rule. An objective good-faith exception to the exclusionary rule would allow reliable evidence—including narcotics seized from a drug trafficker—to be admitted into evidence in a criminal trial. The conferees adopted the weaker Senate version.

As is well known, the exclusionary rule is not a constitutional guarantee. It is a judge-made rule to deter abusive police practices. The overtechnical use of the exclusionary rule has resulted in criminals being set free, not because they are innocent, but because the evidence necessary to convict has been seized by an honest mistake.

There should be room to distinguish between a wholly unreasonable search of one's person or home and the simple and honest mistake—made in good faith—of a law enforcement officer conducting a search under sometimes life-threatening circumstances. that is just common sense.

Once again, the conferees rejected the good House language on this point, and adopted the weaker Senate language. And once again, the conference report is worse than existing law. Under current law, a facially valid warrant is sufficient to trigger the good-faith exception unless the basic provisions are absent. A reviewing court can easily determine if this test, as well as the test of a neutral and detached magistrate, are met.

The conference report is worse because it creates loopholes if the magistrate was intentionally or recklessly misled. Every defendant will claim that the warrant was issued in those circumstances. That claim will require hearings and delay and expense to resolve—to the detriment of our criminal justice system.

Can we really expect—as this report seems to demand—that an officer should crossexamine the issuing judicial officer as to possible deficiencies in the warrant?

The conference report's exclusionary rule excludes the possibility of reform.

The conference report will exclude evidence of confessions. The conference report will exclude so-called coerced confessions even if the error is harmless beyond a reasonable doubt to the issue of guilt.

Once again, the conference report overrules a Supreme Court decision that is tough on crime.

I am not advocating that police beat confessions out of arrestees. That's not the issue here. The concern relates only to police informers in prison cells whose status is not disclosed to the defendant.

The conference report is nonsensical as it relates to guns. The bill makes innocent, law-abiding citizens want to purchase a gun.

At the same time, it is weak on provisions that affect the role and use of guns in the commission of crimes. For instance, the report dropped the Senate provision that would have permitted a penalty increase for possessing a firearm in a crime of violence or drug trafficking. It also dropped the Senate bill's provision that would revoke probation for anyone found in possession of a firearm. Similarly, it rejected the Senate proposal to criminalize the possession of a stolen firearm and it dropped a provision to try juveniles as adults on firearms and drug offenses.

The conference report is weak on the issue of child abuse. It fails to adopt doubled penalties for repeat sex offenders, as well as restitution for victims of sex offenders. It drops a proposed enhanced penalty for offenders who know they are HIV positive and engage in criminal conduct creating a risk of transmission of the virus to the victim.

The conference report does not do enough to protect victims of crime. While it permits victims the right of allocation to the courts at the time of sentencing, the conference report struck a House provision that would have allowed the court, after a hearing, to suspend the defendant's Federal benefits if the defendant was delinquent in making restitution to his victim.

Finally, the conference report contains an objectionable sports lottery

provision. It will prohibit all but a few States to have sports lotteries. Why this is in a crime bill I do not know. But it is a terrible piece of legislation.

It grandfathers States that already engage in millions of dollars of legal sports gambling. It violates States rights to enact whatever lotteries they choose. And it comes at a terrible time. States are faced with massive federally mandated spending. They face recession and severe fiscal problems. This bill would interfere with a State's choice as to how it chooses to raise its income.

The one regret I have, Mr. President, is that this bill includes the Antiterrorism Act, which would create civil remedies for American victims of terrorism.

I have been working on this bill for 3 years now, and the Senate has passed it twice. The House included the ATA in their version of the crime bill, and it is included in the conference report. I urge the House to pass the ATA as a separate bill so that the President can sign it into law. It won't become law as part of this so-called crime bill.

In conclusion, Mr. President, this conference report does not offer us a real opportunity to enact a truly tough and effective anticrime package. If anything, it is an anti-anticrime package.

This report is a hollow bill. I urge the President to veto this bill. He should force the Congress to work with him to see to it that real anticrime legislation is enacted and signed into law.

Mr. KOHL. Mr. President, I rise today for several purposes: first, to express my disappointment with the Senate's failure to invoke cloture on the strong anticrime package worked out between the House and the Senate; second, to assure my colleagues that I will continue to work for enactment of this measure; and third, to reiterate my enthusiastic support for the conference provisions on the Brady bill. Like the Senate-passed proposal, the conference report combines the best elements of both the Brady and Staggers approaches.

It is not news to anyone that violent crime has become a fact of life in American cities. For example, last week a woman driving in the District of Columbia was ruthlessly gunned down because a young hoodlum carrying a handgun just "felt like killing someone." The sad fact is that it may be more dangerous to live in America than to serve our country in a foreign war. Less than 300 Americans died during the Persian Gulf conflict, yet 450 people have already been murdered this year in our Nation's Capital.

Mr. President, no single legislative change will make our streets safer. A comprehensive approach is needed—more police, tougher laws, more certain punishment. But while there is no panacea for our crime problem, there is a crucial step we can take today to reduce the carnage. We can enact the provisions of the Senate-passed Brady bill—a mandatory background check and a uniform waiting period of 5 business days for anyone seeking to buy a handgun. Under our proposal, the waiting period would be in effect for at least 2½ years and it could only be repealed when an accurate instant check system is in place that would apply to all firearms purchases. In addition, the measure would authorize $100 million to help States upgrade their computerized criminal records.

In the United States, firearms violence is simply out of control. Guns were responsible for more than 10,000 murders in 1991—a 20-percent increase over 1987. Guns were used in more than 600,000 violent crimes last year. No State is immune to gun-related violence. Last year Wisconsin set a record with more than 200 senseless killings, and most of those murdered were killed with guns.

Mr. President, not all of these weapons were acquired illegally. Indeed, according to the Department of Justice, more than 20 percent of all criminals—roughly 120,000 people a year—obtain their handguns through licensed dealers. That is why the Brady bill is so vital—it would help keep guns out of the hands of criminals and drug traffickers.

But don't just take my word for it; look at who else supports it. Brady has been endorsed by every living President—including former President Reagan. It is supported by every major law enforcement organization. and even the NRA believes it makes sense. Its 1976 publication entitled "On Firearms Control" says:

> A waiting period could help in reducing crimes of passion and in preventing people with criminal records or dangerous mental illness from acquiring weapons.

The Brady approach also enjoys wide support because of what it would not do—it would not take anyone's guns away. A criminal records check guaranties that lethal weapons are not sold to individuals with track records of dangerous behavior. A waiting period ensures that we let people consumed by violent passion "cool-off." In short, Brady will create little inconvenience to law-abiding gun buyers, but it will help save lives.

The Senate passed the Mitchell-Kohl-Gore amendment to Senator METZENBAUM's Brady bill by a vote of 67–32. The provision which has come out of conference is essentially the Senate bill with technical corrections and few minor changes. It is not a perfect proposal, nor is the crime bill itself perfect—a compromise seldom is. But we do the American people a disservice when we allow the struggle for perfection to become the enemy of the good.

Mr. President, although we did not complete action on this measure today, I will continue to work for enactment of a comprehensive crime package—one that includes the Brady bill.

Mr. SIMPSON. Mr. President, this body, when we passed the Senate crime bill last July, expressed its strong bipartisan concern about the excessive deals in habeas corpus. That is the process by which convicted murderers appeal State court convictions in Federal courts.

In its vote on strong habeas corpus reform, the Senate sent a pretty strong message that truly reflected the will of the American people: That we are sick and tired of the obscene delays in implementing capital punishment.

During the debate, we heard many accounts of the most gruesome and heinous crimes. Instances where the convicted murderer has delayed his execution for many years. That is the injustice that has been forced upon the American people and which the habeas corpus title in the Senate crime bill would have corrected. Now, Mr. President, we are presented with a conference report which is a slap in the face to law-abiding citizens all across this country.

Mr. President, allow me to draw the attention of this body to another provision in this "criminal rights" crime bill: the provision overruling Arizona versus Fulminante regarding so-called coerced confessions.

The average ax murderer on death row now consumes 8 to 10 years in habeas appeals. Besides vicious murderers, there are countless violent rapists and others of that ilk lounging in our prisons thinking of new and creative ways to try and convince an appellate court that they were railroaded or that they are really innocent.

Under the provisions of title VI, each and every one of those who at one time confessed, can now go back and get a new trial. This title defines a "coerced confession" as simply one that was elicited in violation of the 5th and 14th amendments. All a criminal has to do in a habeas petition is "allege" a violation and he will get a new trial.

I urge my colleagues to stop and think of what that can mean. Imagine "Joe the Ax-Murderer" who "confessed" without an attorney present.

Under this title, that could be a coerced confession. Consider also that in Joe's case, he was convicted because there were also two eye witnesses. On his latest of a dozen or so appeals, the court ruled that admission of the confession didn't matter, because there was overwhelming additional evidence of guilt.

That's what the law is today: It's harmless error to allow a jury to hear a so-called coerced confession if there is overwhelming additional evidence of guilt. Title VI in the bill overrules that, and allows Joe the Ax-Murderer to get a new trial.

What if the evidence has been destroyed in the intervening 8 to 10

years? Or what if the witnesses have died or disappeared? If that were to happen, there's a good chance that Joe the ax-murderer will plea bargain to a lesser sentence. He could get credit for time served and even be eligible for parole. Isn't that absurd?

Just whose interests are being served by this bill? Who stands to benefit?

Not the courts: They will be flooded with new habeas petitions alleging a coerced confession!

Not the public: The public will be at risk if even one of these vicious criminals gets out even one second early!

Not the victims or the witnesses: They have to live through still another trial.

Only the criminals benefit from this title—murderers, rapists, and that sort.

And, Mr. President, that is only a single title of this 500-page monstrosity! Think about title III, regarding the exclusionary rule. This version, as I read it, is even worse than we originally thought when we voted on this in the Senate last June.

In 1984, the Supreme Court recognized that there was a good faith exception to the exclusionary rule. The court said that search warrants which later turned out to be technically defective could not be used to throw out a conviction. This exception to the exclusionary rule has been incorporated into the case law of our country.

This bill would codify that into the unchanging—and inflexible—body of our statutory law.

All this appears to take great steps in making a real difference to fight crime, but hold on!

By making this exception part of the statutory law—codified law—the real effect will be to overrule appeals court decisions which have been applying the good faith exception to the exclusionary rule for evidence that was obtained in warrantless searches.

We need to give the police a wider good faith exception to the exclusionary rule: An exception that could be used on evidence that was obtained without a warrant. Law enforcement officials say this is not only a far more common occurrence, but is more productive in waging a successful fight against crime and criminals.

The bill would restrict police discretion—we would be handcuffing the police, not the criminals.

In an attempt to appear to solidify the good faith exception, this bill actually narrows it. The bill gives with one hand, while it snatches away with the other.

The exclusionary rule, grounded in fourth amendment protections, prohibits the use of evidence obtained in "unreasonable" searches and seizures. It does not protect against the use of evidence that has been obtained as the result of a "reasonable" search and seizure.

That is what the Supreme Court has preserved with is definition of the exclusionary rule. The Court declared that evidence obtained under a technically defective warrant—during the course of a reasonable search or seizure—could be used if it was taken in good faith.

Appeals courts have permitted the use of evidence taken reasonably even without a warrant if the police acted in good faith. As the law stands now, evidence obtained in good faith on a warrant is admissible. This legislation will have the effect of prohibiting that evidence.

So again, Mr. President, I ask my colleagues to consider whose interests are being served. I can tell you it's not the interests of the police, the courts, or especially, the American public. This bill is pure and simple a criminal rights bill and I strongly urge its rejection by the Senate.

Mr. ROTH. Mr. President, I rise in opposition to the conference committee report on the crime bill. This so-called crime bill, to quote the words of the President of the National District Attorneys Association, "Does far more to advance the interests of convicted criminals than it does to protect victims and law-abiding citizens."

As the U.S. Department of Justice has pointed out, the conference committee consistently rejected the better option from either the House or Senate crime bills and invariably selected the option most likely to assist criminals and harm law enforcement.

The attorney general of my home State of Delaware, for example, has written me to urge support of the original Senate language regarding habeas corpus reform, and the original House language regarding the Federal death penalty and the exclusionary rule. Unfortunately, the conference committee has done the exact opposite in all three cases.

In short, Mr. President, if this conference committee report were a person, it would be subject to arrest for fraud or for criminal impersonation of an anticrime bill.

The legislation before this body contains habeas reform that in many ways is worse than the current abuse ridden system. The habeas provisions in this bill place new burdens on the States and fail to address the injustices that the existing system of endless litigation and repetitive review inflicts on the families of murder victims and the law-abiding public. This body approved real habeas reform but it was rejected by the conference committee.

While it is true that this legislation provides for the death penalty for a wide range of offenses—which I support—it is also true that this legislation contains provisions that gut the effectiveness of the death penalty. Moreover, this legislation contains no provisions guarding against the obstruction of the Federal death penalty through endless collateral litigation.

Concerning the exclusionary rule, this legislation does nothing to aid law enforcement in its fight against crime. In fact this legislation is more restrictive than existing law and would require the exclusion of more relevant evidence.

This bill also increases the range of cases in which criminal convictions will be reversed on the basis of harmless errors. And it does little to combat rape and child molestation, or to protect the rights of crime victims.

On top of all this, the taxpayers are asked to shell out more than $3 billion in this bill. Perhaps we should add highway robbery to the charge of fraud.

As we all know, an effective criminal justice system requires maintaining public confidence in that system. I believe that this legislation will do great harms to the already low level of public confidence in the system.

For these reasons I urge my colleagues to join me in opposing this legislation.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1991

Mr. NUNN. Mr. President, we are here today to decide how this body will address the spiraling problems of drugs, guns, and criminal activity which continue to plague this Nation. From Los Angeles, CA, to Portland, ME; from Detroit, MI, to Macon, GA; drugs and crime threaten us all, our communities, our neighborhoods, and our families.

Only yesterday, Mayor Sharon Pratt Dixon of Washington, DC described the crime problem in our Nation's Capital as a "war of values."

She is exactly right. The fundamental test of any civilized society is its ability to make law-abiding citizens secure in their persons and property, without taking measures that themselves threaten the well-being of law-abiding citizens.

Striking that balance properly is the real challenge we face in enacting any anticrime legislation. While it is hardly perfect, this bill does contribute to the safety of law-abiding citizens without endangering their rights, and merits our support.

We should not, however, mislead the American people into believing this bill will have an immediate impact on crime statistics.

The real day-to-day struggle against crime is not centered in the Federal courts, the Federal prisons, or Federal law enforcement officials, important as they all are. It is in our communities, and in the State and local law enforcement officers who are our front-line troops in the war on crime.

Our role in the war on crime is first to concentrate on those aspects of law enforcement where the Federal Government does play a unique role, such as

drug enforcement, interstate criminal investigations, organized crime, many white-collar crimes, and criminal appeals; and then to ensure that we help, not hinder, State and local officials in their particular jurisdictions as much as we can.

The massive bill before us addresses both aspects of the Federal role in law enforcement. This bill represents a tremendous effort on the part of the Judiciary Committee and I commend the members of the committee, and in particular the committee's distinguished chairman, for all of their efforts in attempting to address these often intractable problems.

Without going through the entire bill, I would just like to highlight some of its major provisions. In terms of addressing criminal behavior, this bill provides new minimum penalties for offenses committed with guns, for gun possession by felons, and for theft of guns. It imposes a 5-day waiting period for the purchase of handguns until a national instant check system is developed, and it requires police background checks of gun purchasers in order to keep guns out of the hands of criminals.

The bill includes new efforts to combat gang violence, creates new penalties for terrorist acts, and increases existing penalties for repeat drug offenses, assault, manslaughter, crimes against the elderly, and violent crimes. In addition, the bill expands the Federal death penalty to include such offenses as murder in the course of rape, murder for hire, and drive-by shootings.

In terms of aid to law enforcement, this bill would authorize $1 billion in new aid to local police departments and prosecutors for anti-drug law enforcement efforts, as well as special aid and training for rural police departments. It would create an ROTC-style program to encourage students to serve as police officers, and authorize hundreds of new FBI, DEA, Border Patrol agents, and U.S. attorneys to combat crime and drug trafficking.

In terms of reducing the ability of criminals to abuse the legal process, the bill would codify current rules as annunciated by the Supreme Court to provide for a good faith exception to the exclusionary rule in cases where a search is conducted pursuant to a warrant which later proves defective. In addition, it would limit the number of habeas corpus petitions a death row inmate could file to one, and require that such petition be filed within 1 year.

The bill has been endorsed by organization such as the Fraternal Order of Police, the International Associations of Chiefs of Police, the International Brotherhood of Police Officers, the National Organization of Black Law Enforcement Executives, and the National Association of Police Organizations. All of these groups represent those who are on the front lines of the battle against crime and violence, those whose ability to successful do their jobs is most directly affected by what we do today in this body.

While this is a good bill, it is far from perfect. In this regard I would like to take particular note of concerns expressed by the National District Attorneys Association [NDAA]. The NDAA has raised objections to certain provisions contained in those sections of the bill dealing with the exclusionary rule, habeas corpus reform, and the death penalty.

I have given serious consideration to these objections and I agree with some of their concerns. I particularly agree that the habeas corpus provisions do not sufficiently restrict the much abused process which causes so much delay in our criminal appeals. In the final analysis, however, I believe that there is too much good contained in the close to 500 pages of this bill to let it go down to defeat on the basis of disagreement over a few individual provisions.

The ability to govern is found in the art of compromise. We could reject this bill and attempt to fashion the perfect crime bill—one on which all sides could agree and one which would strike just the right balance on every issue. Yet, as we nobly set about that task, how many more lives would be touched by crime and violence, how many more neighborhood and streets would be lost to those who prey on the innocent?

Let us not delude ourselves. This bill will not end our nation's crime problem. No legislation we pass and no war on crime will ever accomplish this feat. Ultimately, the war on crime depends on the outcome of the "war of values" that Mayor Dixon spoke of so eloquently. The strength of our families, the cohesiveness of our communities, the influence of our religious institutions, and the wisdom of our leaders and educators—these factors will contribute to the war on crime more than all the legislation we could ever enact.

For those upon whom the war of values would be lost, however, we must assure that detection, pursuit and punishment is swift, certain, and severe. That is what I believe this bill accomplishes. It is for that reason that I shall support this bill, and I urge my colleagues to do likewise.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 345, 346, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 473, 475, 476, 477, 478, 479; all nominations placed on the Secretary's desk in the Air Force, Army, and Navy.

I further ask unanimous consent that the Senate proceed to the following nominations reported today by the Committee on Armed Services: Donald C. Fraser, to be Deputy Under Secretary of Defense for Acquisition,

James Roderick Lilley, to be an Assistant Secretary of Defense; and

Victor H. Reis, to be Director of Defense Research and Engineering.

Mr. President, I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Alice M. Batchelor, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

Harold R. DeMoss, Jr., of Texas, to be United States Circuit Judge for the Fifth Circuit.

DEPARTMENT OF STATE

Robert Stephen Pastorino, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Dominican Republic.

Curtis Warren Kamman, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

George Fleming Jones, of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Co-operative Republic of Guyana.

William Edwin Ryerson, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Albania.

John R. Davis, Jr., of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Romania.

Frederick Vreeland, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

John Hubert Kelly, of Georgia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Finland.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Jose E. Martinez, of Texas, to be Director of the Trade and Development Program. (New Position)

INTER-AMERICAN FOUNDATION

William Kane Reilly, of Virginia, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 1994.

EXECUTIVE OFFICE OF THE PRESIDENT

Clair W. Burgener, of California, to be a Member of the Advisory Board for Cuba

Broadcasting for a term expiring October 27, 1994.

AIR FORCE

The following officers for appointment in the United States Air Force to the grade of brigadier general under the provisions of section 624, Title 10 of the United States Code:

To be brigadier general

Col. George P. Cole, Jr. [redacted] Regular Air Force.

Col. Eldon W. Joersz. [redacted] Regular Air Force.

PANAMA CANAL COMMISSION

William Carl, of Texas, to be a Member of the Board of the Panama Canal Commission.

John J. Danilovich, of California, to be a Member of the Board of the Panama Canal Commission.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

John W. Crawford, Jr., of Maryland, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 1996. (Reappointment)

DEPARTMENT OF ENERGY

Leo P. Duffy, of Pennsylvania, to be an Assistant Secretary of Energy (Environmental Restoration and Waste Management).

ARMY

The United States Army National Guard Officer named herein for appointment in the Reserve of the Army of the United States in the grade indicated below, under the provisions of Title 10, United States Code, sections 593(a), 3385 and 3392:

To be major general

Brig. Gen. Nathaniel H. Robb [redacted]

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY

Air Force nominations beginning Clifton D. Daniel, and ending Jack H. Morgan, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Air Force nominations beginning Scotoliff Hector A. Arroyo, and ending Gunther A. Mueller, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Air Force nominations beginning Maj. Michael T. Allen, [redacted] and ending Maj. Earl R. Harrison, Jr [redacted] which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Air Force nominations beginning Ronald M. Adams, and ending Wilbur T. Workman, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Army nominations beginning Charles G. Abbott, and ending Donald J. Copley, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Army nominations beginning James D. Hallums, and ending John H. Grubbs, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Army nominations beginning Bruce A. Adams, and ending Mark E. Zirkelbach, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

Navy nominations beginning Thomas H. Adair, and ending Paul A. Yetmar, which nominations were received by the Senate and appeared in the Congressional Record of October 31, 1991.

Navy nominations beginning Kevin T. Aanestad and ending Kimberly A. Zych, which nominations were received by the Senate and appeared in the Congressional Record of November 15, 1991.

DEPARTMENT OF DEFENSE

Donald C. Fraser, to be Deputy Under Secretary of Defense for Acquisition,

James Roderick Lilley, to be an Assistant Secretary of Defense, and

Victor H. Reis, to be Director of Defense Research and Engineering.

STATEMENT ON THE NOMINATION OF LEO P. DUFFY

Mr. WALLOP. Mr. President, on November 20, 1991, the Committee on Energy and Natural Resources unanimously reported the nomination of Mr. Leo Duffy to be Assistant Secretary for Environmental Restoration and Waste Management for the Department of Energy.

Mr. Duffy has served as the Director for this office since 1989, and has extensive previous experience in the area of hazardous waste cleanup. Prior to joining the Department, he served in several senior managerial positions—vice president and project director, Roy F. Westin, Inc.; general manager, Westinghouse Waste Technology Services Division, Westinghouse Electric Corp.; and manager of EG&G Idaho, Inc. Waste Management Group. Mr. Duffy holds a B.S. degree in mechanical engineering form New York University and attended the Bettis Reactor Design School.

Mr. President, the recent battle in this body over the Federal facilities bill and the impossibility of compliance confronting the Department of Energy with respect to mixed waste underscores the significance of the responsibilities Mr. Duffy is undertaking. He is faced with the formidable task of assessing and mitigating the environmental legacies from an era that was focused almost exclusively on national security.

As our knowledge of the environmental consequences peripheral to the country's defense production has increased, we have recognized that we must make provisions for cleaning up our defense production sites. But a commitment to that endeavor is more than simply throwing a pot of money after the problem. Someone must make intelligent decisions about the extent of the problem, the methods of dealing with it, and the benefits achievable relative to the costs.

The magnitude of the job cannot be underestimated, and I admire Mr. Duffy for being willing to undertake that task. At the same time, as I indicated during the confirmation hearing, I intend to keep a close eye on the progress of this program.

Mr. President, I urge my colleagues to join me in supporting this nomination.

Mr. FORD. Mr. President, I ask unanimous consent that the following nominations be discharged from the Agriculture, Nutrition, and Forestry Committee, and that the Senate proceed to their immediate consideration: Gary C. Byrne, to be a member of the Farm Credit Administration Board, Farm Credit Administration; Charles R. Hilty, to be an Assistant Secretary, Department of Agriculture.

I further ask unanimous consent that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF AGRICULTURE

Gary C. Byrne, to be a Member of the Farm Credit Administration Board, Farm Credit Administration; and

Charles R. Hilty, to be an Assistant Secretary, Department of Agriculture.

Mr. FORD. Mr. President, I ask unanimous consent that the following nominations be discharged from the Committee on Labor and Human Resources, and that the Senate proceed to their immediate consideration: Patrick J. Cleary, to be a member of the National Mediation Board; David Alan Heslop, Marjorie Arsht, and Kenneth H. Bastian, Jr., to be members of the National Advisory Council on Educational Research and Improvement; Barbara J.H. Taylor, and James E. Lyons, to be members of the National Commission on Libraries and Information Science; Ian M. Ross, to be a Member of the National Science Board; Eunice B. Whittlesey, Lisa A. Hembry, and Ruth K. Watanabe, to be members of the National Museum Services Board; and Anne C. Seggerman, Mary M. Raether, and Anthony H. Flack, to be members of the National Council on Disability.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action.

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

The nominations considered and confirmed en bloc are as follows:

Patrick J. Cleary, to be a Member of the National Mediation Board;

David Alan Heslop, Marjorie Arsht, and Kenneth H. Bastian, Jr., to be members of the National Advisory Council on Educational Research and Improvement;

Barbara J.H. Taylor and James E. Lyons, to be members of the National Commission on Libraries and Information Science;

Ian M. Ross, to be a member of the National Science Board;

Eunice B. Whittlesey, Lisa A. Hembry, and Ruth K. Watanabe, to be members of the National Museum Services Board; and

Anne C. Seggerman, Mary M. Raether, and Anthony H. Flack, to be members of the National Council on Disability.

Mr. FORD. Mr. President, I ask unanimous consent that all nominations re-

ceived by the Senate remain in status quo, notwithstanding the provisions of rule XXXI 31, paragraph 6, with the following exceptions: James D. Watkins, Richard T. Kennedy, Jane E. Becker, Ivan Selin to be U.S. Representative and Alternate Representatives to the 35th Session of the General Conference of the International Atomic Energy Agency, Department of State; Karl C. Rove of Texas, to be a Member of the Board for International Broadcasting, for a term expiring April 28, 1991, vice Edward Noonan Ney, term expired; and that the Senate return to legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to 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 the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON REDUCTION IN TRAVEL AND TRANSPORTATION—MESSAGE FROM THE PRESIDENT—PM 98

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 Appropriations:

To the Congress of the United States:

In accordance with section 523A of the Treasury, Postal Service and General Government Appropriations Act, 1992, I transmit herewith a report specifying my determination of the uniform percentage necessary to reduce outlays for travel, transportation, and subsistence by $15.7 million. As required by law, this reduction will be applied to all accounts within this appropriations act in FY 1992 with the exception of the Committee for Purchase from the Blind and Other Severely Handicapped. Federal agencies covered by this appropriations act have been instructed to make the required reductions.

GEORGE BUSH.

THE WHITE HOUSE, *November 27, 1991.*

MESSAGES FROM THE HOUSE

At 9 a.m., a message from the House of Representatives, delivered by Mr. Jenkins, one of its clerks, announced that the House agrees to the report of the committee of conference of the Senate to the joint resolution (H.J. Res. 157) making technical corrections and correcting enrollment errors in certain acts making appropriations for the fiscal year ending September 30, 1991, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2950) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, or highway safety programs, and for mass transit programs, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 1532) to revise and extend the programs under the Abandoned Infants Assistance Act of 1988, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3049) to amend the Immigration and Nationality Act to restore certain exclusive authority in courts to administer oaths of allegiance or naturalization.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3595) 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; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WAXMAN, and Mr. LENT as managers of the conference on the part of the House.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 3807) 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; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, without amendment:

S. 367. An act to amend the Job Training Partnership Act to encourage a broader range of training and job placement for women, and for other purposes; and

S. 2098. An act to authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3638. An act making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge; and

H.R. 3909. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 272. An act to provide for a coordinated Federal program to ensure continued United States leadership in high-performance computing;

S. 1284. An act to make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts;

H.R. 1988. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes;

H.R. 3370. An act to direct the Secretary of the Interior to carry out a study and make recommedations to the Congress regarding the feasibility of establishing a Native American cultural center in Oklahoma City, Oklahoma;

S.J. Res. 187. Joint resolution to make a technical correction in Public Law 101-549; and

H.J. Res. 346. Joint resolution approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

At 3:10 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 following bill, in which it requests the concurrence of the Senate:

H.R. 3435. An act to provide funding for the resolution of failed savings associations and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 260. Concurrent resolution providing for an adjournment of the Congress to a date certain.

The message further announced that pursuant to the provisions of section 168(b) of Public Law 102-138, the Speaker appoints Mr. HAMILTON to the Brit-

ish-American Interparliamentary Group on the part of the House.

The message also announced that pursuant to the provisions of section 2702 of 44 United States Code, as amended by Public Law 101-509, the Speaker appoints Mr. Richard F. Fenno, Jr., of Rochester, NY, as a member from private life of the Advisory Committee on the Records of Congress on the part of the House.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 3:47 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 794. An act to establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes;

H.R. 848. An act entitled the "Little Bighorn Battlefield National Monument";

H.J. Res. 201. Joint resolution designating the week beginning December 1, 1991, and the week beginning November 15, 1992, each as "Geography Awareness Week"; and

H.J. Res. 300. Joint resolution designating the month of May 1992 as "National Trauma Awareness Month."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. BYRD].

At 9:38 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 198. Joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

At 12:00, a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3371) to control and prevent violent crime.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (H.R. 543) to reform Federal deposit insurance, protect the deposit insurance funds, recapitalize the Bank Insurance Fund, improve supervision and regulation of insured depository institutions, and for other purposes.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3919. An act to temporarily extend the Defense Production Act of 1950.

At 5:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3595) to delay until September 30, 1992, the issuance of 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.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 261. A concurrent resolution correcting technical errors in the enrollment of the bill S. 543.

At 7:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution; without amendment:

S. Con. Res. 83. A concurrent resolution to authorize a correction in the enrollment to S. 543.

The message also announced that the House agrees to the amendment of the Senate to the concurrent resolution (H. Con. Res. 260) providing for an adjournment of the Congress to a date certain.

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent and referred as indicated:

H.R. 1104. An act to declare certain portions of Pelican Island, TX, nonnavigable; to the Committee on Commerce, Science, and Transportation.

H.R. 1592. An act to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit; to the Committee on Energy and Natural Resources.

H.R. 1688. An act entitled the "Omnibus Insular Areas Act of 1991"; to the Committee on Energy and Natural Resources.

H.R. 2141. An act to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2263. An act to amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or cost savings disclosures, and for other purposes; to the Committee on Governmental Affairs.

H.R. 2450. An act to amend title 28, United States Code, to provide for Federal jurisdiction of certain multiparty, multiforum civil actions; to the Committee on the Judiciary.

H.R. 2502. An act to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2732. To amend title 17, United States Code, with respect to copyright renewal, to reauthorize the National Film Preservation Board, and for other purposes; to the Committee on the Judiciary.

H.R. 2929. An act to designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks and the Mojave National Monument, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2977. An act to authorize appropriations for public broadcasting, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 3048. An act to amend the Immigration and Nationality Act with respect to the admission of O and P nonimmigrants; to the Committee on the Judiciary.

H.R. 3237. An act to extend the terms of office of members of the Foreign Claims Settlement Commission from 3 to 6 years; to the Committee on the Judiciary.

H.R. 3638. An act making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge; to the Committee on Energy and Natural Resources.

H.R. 3359. An act to amend the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1027), and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3666. An act to amend title 28, United States Code, to provide for an additional place for holding court for the Eastern District of Texas; to the Committee on the Judiciary.

H.R. 3670. An act to make certain technical corrections relating to the immigration laws; to the Committee on the Judiciary.

H.R. 3686. An act to amend title 28, United States Code, to make changes in the places of holding court in the Eastern District of North Carolina; to the Committee on the Judiciary.

H.J. Res. 372. Joint resolution designating December 1, 1991, as "World AIDS Day"; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

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. 3341. An act to amend the Ethics in Government Act of 1978 with respect to honoraria, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, November 27, 1991, he had presented to the President of the United States the following enrolled bills and joint resolution:

S. 272. An act to provide for a coordinated Federal program to ensure continued United States leadership in high-performance computing;

S. 1284. An act to make certain technical corrections in the Judicial Improvements Act of 1990 and other provisions of law relating to the courts; and

S.J. Res. 187. Joint resolution to make a technical correction in Public Law 101-549.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 353. A bill to require the Director of the National Institute for Occupational Safety and Health to conduct a study of the prevalence and issues related to contamination of workers' homes with hazardous chemicals and substances transported from their workplace and to issue or report on regulations to prevent or mitigate the future contamination of workers' homes, and for other purposes (Rept. No. 102-253).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment:

S. 1581. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 to enhance technology transfer for works prepared under certain cooperative research and development (Rept. No. 102-254).

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1623. A bill to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

Donald C. Fraser, of Massachusetts, to be Deputy Under Secretary for Acquisition;

James Roderick Lilley, of Maryland, to be an Assistant Secretary of Defense; and

Victor H. Reis, of the District of Columbia, to be Director of Defense Research and Engineering.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PACKWOOD:

S. 2120. A bill to amend the Internal Revenue Code of 1986 to stimulate economic growth in the United States, and for other purposes; to the Committee on Finance.

By Mr. DURENBERGER:

S. 2121. A bill to establish a policy with respect to corrective action and financial assurance for certain class of facilities under subtitle C of the Solid Waste Disposal Act, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BENTSEN:

S. 2122. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; to the Committee on Finance.

By Mr. LAUTENBERG (for himself and Mr. DURENBERGER):

S. 2123. A bill to provide for enhanced reporting to the public of release of toxic chemicals, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BUMPERS:

S. 2124. A bill entitled the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991"; to the Committee on Foreign Relations.

By Mr. MCCONNELL:

S. 2125. A bill to lift the trade embargo against Vietnam if certain conditions are met; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SPECTER:

S. 2126. A bill to extend the temporary suspension of duties on L-alanyl-L-proline, also known as Ala Pro; to the Committee on Finance.

S. 2127. A bill to suspend temporarily the duty on {3R-{3-alpha(R),4-beta}}-4(acetyloxy)-3-{{(1,1-dimethyl ethyl) dimethyl-siyl}oxy}ethyl}-2-azetidinone; to the Committee on Finance.

S. 2128. A bill to suspend temporarily the duty on 3-chloro peroxybenzoic acid; to the Committee on Finance.

S. 2129. A bill to suspend temporarily the duty on composite vials of timolol maleate/pilocarpine solutions and diluents; to the Committee on Finance.

By Mr. DECONCINI (for himself and Mr. HATCH):

S. 2130. A bill to amend title 35, United States Code, to permit separate patent extensions for each product under a patent which is subject to full regulatory review and approval; to the Committee on the Judiciary.

By Mr. RIEGLE:

S. 2131. A bill to repeal section 618 of the Resolution Trust Corporation, Refinancing, Restructuring and Improvement Act of 1991; read the first time.

By Mr. MOYNIHAN:

S. 2132. A bill to require the Administrator of the Environmental Protection Agency to seek ongoing advice from independent experts in ranking relative environmental risks; to conduct the research and monitoring necessary to insure a sound scientific basis for decisionmaking; and to use such information in managing available resources to protect society from the greatest risks to human health, welfare, and ecological resources; to the Committee on Environment and Public Works.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 2133. A bill to provide for the economic conversion and diversification of industries in the defense base of the United States that are adversely affected by significant reductions in spending for national defense; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. NUNN (for himself and Mr. FOWLER):

S. 2134. A bill to provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the United States Olympic Committee; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 2135. A bill to amend the Federal Food, Drug, and Cosmetic Act to enhance the enforcement authority of the Food and Drug Administration, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. CONRAD:

S. 2136. A bill to authorize construction of the northwest area water supply/Fort Berthold integrated water supply project, hereinafter referred to as the "Na chiin Huun-Dakota 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. SPECTER:

S. Res. 238. A resolution for Rules Committee report on plan to deal with Senate perquisites; to the Committee on Rules and Administration.

By Mr. CHAFEE (for Mr. HATFIELD):

S. Res. 239. A resolution reauthorizing the Albert Einstein Congressional Fellowship Program; considered and agreed to.

By Mr. FORD (for Mr. BYRD):

S. Res. 240. A resolution to temporarily suspend for the sole and specific purpose of permitting the United States Capitol Preservation Commission and its designated agents to conduct activities in accordance with the purposes of the Commission on such dates and times, and in such manner as determined by the Senate Co-chair of the Commission or his designee; considered and agreed to.

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 241. A resolution to authorize testimony by and representation of former employee of the Senate in United States v. Peter MacDonald, Jr., et al.; considered and agreed to.

By Mr. GARN:

S. Con. Res. 83. A concurrent resolution to authorize a correction in the enrollment of S. 543; considered and agreed to.

By Mr. RIEGLE:

S. Con. Res. 84. A concurrent resolution to correct the enrollment of H.R. 3435, the R.T.C. Funding Bill; considered and agreed to.

By Mr. FORD (for Mr. DECONCINI):

S. Con. Res. 85. A concurrent resolution to correct a technical error in the enrollment of the bill (H.R. 3531), and for other purpoes; considered and agreed to.

By Mr. CHAFEE (for Mr. DOLE):

S. Con. Res. 86. A concurrent resolution to correct the enrollment of H.R. 2950; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PACKWOOD:

S. 2120. A bill to amend the Internal Revenue Code of 1986 to stimulate economic growth in the United States, and for other purposes; to the Committee on Finance.

GREATER RECOVERY OPPORTUNITY FOR WORKERS ACT OF 1991

• Mr. PACKWOOD. Mr. President, today I am introducing legislation to help hard-working Americans weather these tough economic times. The sad fact is that the recession is lasting much longer than anyone anticipated.

Americans have had to tighten their belts and dip into savings to get by. Others less fortunate have been laid off

and are having difficulty finding work. I am glad we were able to enact legislation this year to extend unemployment benefits for these workers. But more needs to be done.

When Congress returns in January, I believe we should act quickly to enact measures to help our economic recovery. That's why I'm introducing this legislation, the Greater Recovery Opportunities for Workers Act of 1991—known as GrowAmerica.

It seems like everyone in Washington is talking about some kind of tax cut. I think it's time to put some money back into the pockets of hard-working Americans so they can recover from the recession. There are lots of meritorious proposals in the hopper. My bill takes a slightly different approach by giving a 2-year across-the-board 10-percent tax cut for middle-income Americans.

And there a few other things we can do that make sense right now.

First, we should make it easier for small businesses to offer a retirement savings plan to their workers. Today, one of the largest gaps in retirement savings is that of small employees. Less than 20 percent of these workers are covered by an employer-sponsored savings plan. This is because the current pension rules are overly complex. My bill would make it easier for small businesses to offer a retirement savings plan by establishing a new, simplified pension plan, called the PRIME Retirement Account.

Second, Americans should not be penalized for saving. My bill allows people to withdraw money penalty-free from individual retirement accounts and 401k retirement plans for the purchase of a first home, to cover expenses during long periods of unemployment, and to pay for college education and large medical bills.

Third, we should give smaller businesses a little help in modernizing their businesses. My bill doubles the amount of equipment purchases that small businesses can deduct from their taxes and indexes this for inflation.

Finally, I think the time has come to rework the passive-loss rules to make them more equitable for the real estate industry. I am convinced that the passive-loss rules hit the real estate industry too hard and we need to act now to correct this so that the industry can pull out of the tailspin it has been in. When we drafted the passive-loss rules in 1986, we were trying to eliminate tax shelters and we did. We did not intend to hit bona fide losses of someone actively running a business. Unfortunately, that was the effect of the passive-loss rules on the real estate industry. My bill corrects this inequity by allowing those whose primary business is real estate to prove they materially participate in rental real estate activities.

No doubt about it—these ideas cost money. But I think we can afford them through cuts in spending. Changes in Eastern Europe and the Soviet Union make defense cuts feasible in the future. And, if additional revenue is needed, wealthy Americans should be asked to pay a little more in income taxes. Although no one is exempt from a recession, wealthy individuals tend to weather hard economic times better than others.

It's time to put politics and partisan differences aside and work together on responsible tax relief legislation to give hard-working Americans a break.

Mr. President, I ask unanimous consent that a detailed description of my GrowAmerica proposal and the bill be printed in the RECORD.

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

DESCRIPTION OF PACKWOOD GROWAMERICA PROPOSAL

1. Middle-income tax cuts. For 1992 and 1993, the income taxes of middle-income Americans will be cut by 10 percent.

Married couples—filing a joint tax return—will receive a 10-percent tax cut if their taxable income is $40,000 or less. Married couples with taxable incomes between $40,000 and $50,000 will receive a smaller tax cut—10 percent minus 1 percent for each $1,000 of taxable income over $40,000.

Single heads of households will receive a 10-percent tax cut if their taxable income is under $30,000. Single heads of households having taxable income between $30,000 and $40,000 will receive a smaller tax cut—10 percent minus 1 percent for each $1,000 of taxable income over $30,000.

Anyone else will receive a 10-percent tax cut if their taxable income is under $20,000. Those having taxable income between $20,000 and $30,000 will receive a smaller tax cut—10 percent minus 1 percent for each $1,000 of taxable income over $20,000.

2. The PRIME Retirement Account. Beginning in 1992, a new simplified, easy to administer retirement plan—known as the PRIME Retirement Account—will be available for workers employed by small businesses.

Employers with under 100 employees will be able to offer a PRIME Retirement Account to full-time employees—those expected to work at least 1,000 hours a year.

Employees who choose to have a PRIME Retirement Account can make pretax contributions to the PRIME account, through payroll deductions, of up to $3,000 a year.

Employers must match each employee's contribution dollar-for-dollar up to the first 3 percent of compensation—maximum total contribution of $3,000 a year.

Once employee and employer contributions are deposited in the PRIME Retirement Account, the contributions are fully vested and the account operates very much like an individual retirement account.

The PRIME Retirement Account plan does not have the various IRS and ERISA filing requirements and recordkeeping burdens that apply to current law employer sponsored retirement plans, which discourages small businesses from offering a retirement savings plan to their workers.

3. Savings without penalties. Beginning in 1992, Americans will have the option of withdrawing funds penalty free from an individual retirement account or a 401k retirement plan for the following purposes:

Purchase of their first home, or their children's or grandchildren's first home.

College education for themselves and their spouse, children, and grandchildren.

Large medical bills.

Periods of unemployment extending longer than basic unemployment benefits.

Amounts withdrawn because of unemployment may be recontributed within 1 year of reemployment.

4. Expensing for small businesses. Beginning in 1992, the amount of equipment purchases that can be deducted by small businesses in the year of purchase is increased from $10,000—under current law—to $20,000. The $20,000 amount is also indexed for inflation occurring in the future.

5. Passive losses for real estate. Beginning in 1992, individuals whose primary business is in the real estate industry will be allowed to prove that they materially participate in rental real estate activities.

An exemption is made to the current law rule that losses from rental real estate activities are always treated as passive losses, no matter how much work someone does. To qualify for the exemption:

An individual must materially participate in one or more real property trade or business and the time spent so materially participating must be more than one-half of the total time spent working in all trade or businesses.

A closely held corporation must materially participate in one or more real property trade or businesses and more than 50 percent of the corporation's gross receipts must come from such real property trade or businesses.

Those qualifying for the exemption must prove that they materially participate in the rental real estate activity in order to deduct losses from such activities. At the election of the taxpayer, all rental real estate activities of the taxpayer may be aggregated for this determination.

S. 2120

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

SECTION 1. SHORT TITLE; AMENDMENTS OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Greater Recovery Opportunity for

Workers Act of 1991", to be known as the "GrowAmerica Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—REDUCTION IN INDIVIDUAL INCOME TAXES

SEC. 101. REDUCTION IN TAX RATES FOR LOW AND MIDDLE INCOME TAXPAYERS FOR 1992 AND 1993.

(a) IN GENERAL.—Part I of subchapter A of chapter 1 (relating to tax on individuals) is amended by inserting after section 3 the following new section:

"SEC. 4. REDUCTION IN INDIVIDUAL INCOME TAXES FOR 1992 AND 1993.

"(a) GENERAL RULE.—In the case of an individual, the tax imposed under section 1 (or any tax imposed in lieu thereof) for any taxable year beginning in 1992 or 1993 (determined without regard to this section) shall be reduced by an amount equal to the applicable percentage of such tax.

"(b) APPLICABLE PERCENTAGE.—

"(1) IN GENERAL.—For purposes of this section, the term 'applicable percentage' means 10 percent, reduced by 1 percentage point for each $1,000 (or any fraction thereof) by which the taxable income of the taxpayer exceeds the applicable limit.

"(2) APPLICABLE LIMIT.—For purposes of paragraph (1), the term 'applicable limit' means—

"(A) $40,000 in the case of a taxpayer to whom section 1(a) applies,

"(B) $30,000 in the case of a taxpayer to whom section 1(b) applies, and

"(C) $20,000 in the case of any other taxpayer.

"(c) SPECIAL RULES.—

"(1) SECTION NOT TO APPLY TO ESTATES AND TRUSTS.—For purposes of this section, the term 'individual' shall not include any estate or trust taxable under section 1.

"(2) COORDINATION WITH OTHER PROVISIONS.—The provisions of this section—

"(A) shall be applied after the application of section 1(h), but

"(B) before the application of any other provision of this title which refers to the amount of the tax imposed by section 1.

"(3) TABLES.—In order to reflect the amount of the reduction in tax under this section for different levels of taxable income, the Secretary may—

"(A) modify the tables under sections 1, 3, and 3402, or

"(B) prescribe such other tables as the Secretary determines necessary."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter A of chapter 1 is amended by inserting after the item relating to section 3 the following new item:

"Sec. 4. Reduction in individual income taxes for 1992 and 1993."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) SECTION 15 NOT TO APPLY.—The amendments made by this section shall not be treated as a change in rates of tax to which section 15 applies.

TITLE II—SAVINGS INCENTIVES

Subtitle A—Private Retirement Savings

SEC. 201. ESTABLISHMENT OF PRIME RETIREMENT ACCOUNTS FOR EMPLOYEES OF SMALL EMPLOYERS.

(a) IN GENERAL.—Section 408 (relating to individual retirement accounts) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) PRIME ACCOUNTS.—

"(1) IN GENERAL.—For purposes of this title, the term 'prime account' means an individual retirement plan—

"(A) with respect to which the requirements of paragraphs (3), (4), (5), and (6) are met; and

"(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

"(2) QUALIFIED SALARY REDUCTION ARRANGEMENT.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified salary reduction arrangement' means a written arrangement of an eligible employer under which—

"(i) an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the prime account on behalf of the employee, or

"(II) to the employee directly in cash,

"(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of $3,000 for any year, and

"(iii) the employer—

"(I) is required to make a matching contribution to the prime account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed 3 percent of compensation, and

"(II) may make no other matching contribution.

"(B) ELIGIBLE EMPLOYER.—For purposes of this subsection, the term 'eligible employer' means an employer who normally employs fewer than 100 employees on any day during the year.

"(C) ARRANGEMENT MAY BE ONLY PLAN OF EMPLOYER.—

"(i) IN GENERAL.—An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or amounts were accrued, for any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made.

"(ii) SERVICE CREDIT.—A qualified plan maintained by an employer shall provide that, in computing the accrued benefit of any employee, no credit shall be given for service during a year for which such employee was eligible to participate in a qualified salary reduction arrangement of such employer.

"(iii) QUALIFIED PLAN.—For purposes of this subparagraph, the term 'qualified plan' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

"(D) NO FEE OR PENALTY ON EMPLOYEE'S INITIAL INVESTMENT DETERMINATION.—An arrangement shall not be treated as a qualified salary reduction arrangement unless it provides that no fee or penalty will be imposed on an employee's initial determination with respect to the investment of any contribution.

"(3) VESTING REQUIREMENTS.—The requirements of this paragraph are met with respect to a prime account if the employee's rights to any contribution to the prime account are nonforfeitable. For purposes of this paragraph, the rules of subsection (k)(4) shall apply.

"(4) PARTICIPATION REQUIREMENTS.—The requirements of this paragraph are met with respect to any prime account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who are reasonably expected to work at least 1,000 hours during such year are eligible to make the election under paragraph (2)(A)(i).

"(5) ADMINISTRATIVE REQUIREMENTS.—The requirements of this paragraph are met with respect to any prime account if, under the qualified salary reduction arrangement—

"(A) an employer must make the elective employer contributions under paragraph (2)(A)(i) and the employer matching contributions under paragraph (2)(A)(iii) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made,

"(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so elects, the employee may not elect to resume participation until the beginning of the next year, and

"(C) each employee eligible to participate—

"(i) may elect, during the 60-day period before the beginning of any year, to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year, and

"(ii) may elect, within 30 days of commencing employment during any year, to participate in the arrangement.

"(6) SPOUSAL CONSENT.—The requirements of this paragraph are met if requirements similar to the requirements of section 401(a)(11) are met. For purposes of applying section 401(a)(11)(B)(iii), the arrangement shall be treated in the same manner as a defined contribution plan.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE.—The term 'employee' includes an employee as defined in section 401(c)(1).

"(B) YEAR.—The term 'year' means the calendar year."

(b) PRIME ACCOUNTS NOT TREATED AS PENSION PLANS.—Notwithstanding any other provision of law, a prime account or qualified salary reduction arrangement under section 408(p) of the Internal Revenue Code of 1986 shall not be treated as an employee benefit plan or pension plan for purposes of the Employee Retirement Income Security Act of 1974.

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

SEC. 202. TAX TREATMENT OF PRIME ACCOUNTS.

(a) DEDUCTIBILITY OF CONTRIBUTIONS.—

(1) Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR PRIME ACCOUNTS.—This section shall not apply with respect to any amount contributed to a prime account established under section 408(p)."

(2) Section 219(g)(5)(A) (defining active participant) is amended by striking "or" at the end of clause (iv) and by adding at the end thereof the following new clause:

"(vi) any prime account (within the meaning of section 408(p)), or".

(b) CONTRIBUTIONS AND DISTRIBUTIONS.—

(1) Section 402 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end thereof the following new subsection:

"(k) TREATMENT OF PRIME ACCOUNTS.—The rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a prime account under section 408(p)."

(2) Section 408(d)(3) is amended by adding at the end thereof the following new subparagraph:

"(G) PRIME ACCOUNTS.—This paragraph shall not apply to any amount paid or distributed out of a prime account (as defined in section 408(p)) unless it is paid into another prime account."

(3) Clause (i) of section 457(c)(2)(B) is amended by striking "section 402(h)(1)(B)" and inserting "section 402(h)(1)(B) or (k)".

(c) PENALTIES.—

(1) EARLY WITHDRAWALS.—Section 72(t) (relating to additional tax in early distributions) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULES FOR PRIME ACCOUNTS.—In the case of any amount received from a prime account (within the meaning of section 408(p)) during the 3-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting '25 percent' for '10 percent'."

(2) FAILURES TO REPORT.—Section 6693 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) PENALTIES RELATING TO PRIME ACCOUNTS.—

"(1) EMPLOYER PENALTIES.—An employer who fails to provide 1 or more notices required by section 408(l)(2)(C) shall pay a penalty of $100 for each day on which such failures continue.

"(2) TRUSTEE PENALTIES.—A trustee who fails—

"(A) to provide 1 or more statements required by the last sentence of section 408(i) shall pay a penalty of $100 for each day on which such failures continue, or

"(B) to provide 1 or more summary descriptions required by section 408(l)(2)(B) shall pay a penalty of $100 for each day on which such failures continue."

(d) REPORTING REQUIREMENTS.—

(1)(A) Section 408(l) is amended by adding at the end thereof the following new paragraph:

"(2) PRIME ACCOUNTS.—

"(A) NO EMPLOYER REPORTS.—Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

"(B) SUMMARY DESCRIPTION.—The trustee of any prime account established pursuant to a qualified salary reduction arrangement under subsection (p) shall prepare, and provide to the employer maintaining the arrangement, each year a description containing the following information:

"(i) The name and address of the employer and the trustee.

"(ii) The requirements for eligibility for participation.

"(iii) The benefits provided with respect to the arrangement.

"(iv) The time and method of making elections with respect to the arrangement.

"(v) The procedures for, and effects of, withdrawals from the arrangement.

"(C) EMPLOYEE NOTIFICATION.—The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B)."

(B) Section 408(l) is amended by striking "An employer" and inserting—

"(1) IN GENERAL.—An employer".

(2) Section 408(i) is amended by adding at the end the following new flush sentence:

"In the case of a prime account under subsection (p), only one report under this subsection shall be required to be submitted to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar quarter, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar quarter."

(e) CONFORMING AMENDMENTS.—

(1) Section 280G(b)(6) is amended by striking the "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or" and by adding after subparagraph (C) the following new subparagraph:

"(D) a prime account described in section 408(p)."

(2) Section 402(g)(3) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding after subparagraph (C) the following new subparagraph:

"(D) any employer contribution under section 408(p)(2)(A)."

(3) Subsections (b) and (c) of section 414 are each amended by inserting "408(p)," after "408(k),".

(4)(A) Section 415(a)(2) is amended by striking "or" at the end of subparagraph (B), by inserting "or" at the end of subparagraph (C), and by adding after subparagraph (C) the following new subparagraph:

"(D) a prime account described in section 408(p),"

(B) Section 415(a)(2) is amended—

(i) by striking "or pension" and inserting "pension, or account", and

(ii) by striking "or 408(k)" and inserting "408(k), or 408(p)".

(C) The second last sentence of section 415(c)(2) is amended—

(i) by inserting a comma after "408(d)(3))", and

(ii) by inserting ", and without regard to contributions to a prime account which are excludable from gross income under section 408(p)" after "408(k)(6)".

(D) Section 415(e)(5) is amended by inserting "or prime account" after "simplified employee pension".

(E) Section 415(k)(1) is amended by striking "or" at the end of subparagraph (E), by striking the period at the end of subparagraph (F) and inserting ", or", and by inserting after subparagraph (F) the following new subparagraph:

"(G) a prime account described in section 408(p)."

(5) Section 4972(d)(1)(A) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding after clause (iii) the following new clause:

"(iv) any prime account (within the meaning of section 408(p))."

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

Subtitle B—Savings Without Penalties

SEC. 211. PENALTY-FREE DISTRIBUTIONS FROM CERTAIN RETIREMENT PLANS.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES OR DURING PERIODS OF UNEMPLOYMENT.—

"(i) IN GENERAL.—Distributions to an individual from an eligible individual retirement arrangement—

"(I) which are qualified first-time homebuyer distributions (as defined in paragraph (7)),

"(II) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (8)) of the taxpayer for the taxable year, or

"(III) which are made during a period of involuntary unemployment described in paragraph (9).

"(ii) DISTRIBUTIONS MAY BE INCREASED TO REFLECT TAX LIABILITY.—The amount of distributions to which subclause (I) or (II) of clause (i) apply for any taxable year shall be increased by other distributions to the extent that the amount of such other distributions does not exceed the product of—

"(I) the amount determined under subclause (I) or (II) of clause (i) (without regard to this clause), multiplied by

"(II) the highest rate of tax applicable to the taxpayer under section 1.

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) TECHNICAL AMENDMENT.—Section 72(t)(2)(B) is amended by inserting "and without regard to any amounts includible in gross income for such taxable year by reason of such distributions" after "taxable year".

(c) DEFINITIONS.—Section 72(t), as amended by section 202, is amended by adding at the end thereof the following new paragraphs:

"(7) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)(I)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the child or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—

"(I) IN GENERAL.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

"(II) ROLLOVER CASES EXCLUDED.—An individual shall not be treated as a first-time homebuyer if the residence acquired is treated as a new residence for purposes of section 1034. This subclause shall not apply if the individual elects not to treat the residence as a new residence for purposes of section 1034.

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

"(i) any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in subparagraph (A), and

"(ii) by reason of a delay in the acquisition of the residence, the requirements of subparagraph (A) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) without regard to section 408(d)(3)(B), and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(8) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(i)(II)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH OTHER PROVISIONS.—

"(i) REIMBURSED EXPENSES.—No amount shall be treated as qualified higher education expenses if a scholarship or grant is received for such expenses or such expenses are otherwise reimbursed to the taxpayer.

"(ii) SAVINGS BONDS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135.

"(9) PERIOD OF INVOLUNTARY UNEMPLOYMENT.—For purposes of paragraph (2)(D)(i)(III)—

"(A) IN GENERAL.—The term 'period of involuntary unemployment' means the consecutive period beginning on the 180th day after an individual becomes unemployed and ending with the date on which the individual begins any employment which would disqualify the individual from receiving unemployment compensation.

"(B) EMPLOYEE MAY RECONTRIBUTE AMOUNT WITHDRAWN.—For purposes of this title, if, during the 1-year period following the close of any period of involuntary unemployment, an employee makes 1 or more contributions to eligible individual retirement arrangements in amounts not greater than amounts to which paragraph (2)(D)(i)(III) applied during the period of involuntary unemployment—

"(i) the employee may elect to treat such contributions (or any portion thereof) as recontributions of the amounts withdrawn,

"(ii) such contributions shall not be taken into account in determining any excess contributions of the taxpayer, and

"(iii) in the case of any deduction or exclusion with respect to contributions for which an election is made under clause (i)—

"(I) such deduction or exclusion shall only be allowed for contributions with respect to which the amount withdrawn was included in gross income, and

"(II) any limitation on the amount of such deduction or exclusion shall be increased by the amount of contributions described in subclause (I).

The Secretary may issue such regulations as may be necessary to carry out the provisions of this subparagraph, including additional reporting requirements to ensure compliance with such provisions.

"(C) UNEMPLOYMENT COMPENSATION.—For purposes of this paragraph, the term 'unemployment compensation' has the meaning given such term by section 85(b).

"(10) ELIGIBLE INDIVIDUAL RETIREMENT ARRANGEMENT.—For purposes of this subsection, the term 'eligible individual retirement arrangement' means—

"(A) an individual retirement plan,

"(B) a qualified cash or deferred arrangement (as defined in section 401(k)),

"(C) an annuity contract described in section 403(b) purchased under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), or

"(D) an arrangement described in section 501(c)(18)(D)."

(d) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(7)), distributions for qualified higher education expenses (as defined in section 72(t)(8)), or distributions during a period of involuntary unemployment (as defined in section 72(t)(9)), are made, and".

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(7)), for the payment of qualified higher education expenses (as defined in section 72(t)(8)), or for distributions during a period of involuntary unemployment (as defined in section 72(t)(9))."

(3) Section 1034(l) is amended by inserting "(1)" before "For" and by inserting at the end the following new paragraph:

"(2) For election not to have section apply, see section 72(t)(7)(C)(i)(II)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after the date of the enactment of this Act.

TITLE III—ADDITIONAL ECONOMIC GROWTH INCENTIVES

SEC. 301. INCREASE IN AMOUNT OF DEPRECIABLE ASSETS WHICH MAY BE EXPENSED.

(a) IN GENERAL.—Section 179(b)(1) (relating to dollar limitation on election to expense certain depreciable assets) is amended to read as follows:

"(1) DOLLAR LIMITATION.—

"(A) IN GENERAL.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $20,000.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amount under subparagraph (A) 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 '1991' for '1989' in subparagraph (B) thereof."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 1991, in taxable years ending after such date.

SEC. 302. APPLICATION OF PASSIVE LOSS RULES TO RENTAL REAL ESTATE ACTIVITIES.

(a) RENTAL REAL ESTATE ACTIVITIES OF PERSONS IN REAL PROPERTY BUSINESS NOT AUTOMATICALLY TREATED AS PASSIVE ACTIVITIES.—Section 469(c) (defining passive activity) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TAXPAYERS IN REAL PROPERTY BUSINESS.—

"(A) IN GENERAL.—If this paragraph applies to any taxpayer for a taxable year—

"(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

"(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity.

"(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to a taxpayer for a taxable year if more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates.

"(C) SPECIAL RULES FOR SUBPARAGRAPH (B).—

"(i) CLOSELY HELD C CORPORATIONS.—In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

"(ii) PERSONAL SERVICES AS AN EMPLOYEE.—For purposes of subparagraph (B), personal services performed as an employee (other than as an owner-employee) shall not be treated as performed in real property trades or businesses."

(b) CONFORMING AMENDMENT.—Section 469(c)(2) is amended by striking "The" and inserting "Except as provided in paragraph (7), the".

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

By Mr. LAUTENBERG (for himself and Mr. DURENBERGER):

S. 2123. A bill to provide for enhanced reporting to the public of releases of toxic chemicals, and for other purposes; to the Committee on Environment and Public Works.

RIGHT TO KNOW MORE ACT OF 1991

• Mr. LAUTENBERG. Mr. President, today, along with Senator DURENBERGER, I am introducing the Right to Know More Act of 1991, a bill that pro-

vides enhanced reporting to the public of releases of pollutants into the environment.

Mr. President, in 1986, I worked long and hard for the enactment of this reporting program. My goal was clear: to give the citizens of this Nation the right to know what pollutants were being released into the environment.

My goal today is just as simple: to provide a right to know more.

Representatives of industry, the environmental community, and the administration agree—the right-to-know program is moving the Nation forward in the effort to achieve a cleaner environment.

The most recent data, released earlier this year by EPA, showed decreases in reported releases and transfers of right-to-know chemicals into the environment. This is further evidence that the law can encourage voluntary emission reductions and pollution prevention.

We knew in 1986 that we could enhance the benefits of right to know by covering more facilities and more chemicals. That's why we provided EPA with the power to do so in the 1986 law. We are now in the fifth year of the right-to-know program.

But EPA has not taken steps to require additional types of facilities to report under the law. And it has required emissions data on only an additional 16 chemicals.

EPA's inaction denies industry, the public, the Government, and the Nation as a whole the greater benefits possible under right to know. For example, the recent Clean Air amendments require 189 chemicals to be regulated as air toxics; 16 of these chemicals are not covered by the current right-to-know reporting requirements.

There are additional chemicals currently regulated under other Federal and State laws which are not subject to the reporting requirements.

As a recent report by environmentalists showed, facilities that fall outside the right-to-know requirements contribute to the Nation's pollution problems.

The 1986 right-to-know law took an important first step. Congress provided EPA with initial mandates about types of facilities and specific chemicals. But recognizing that the program would require some startup time, Congress deferred to EPA to take the next steps. EPA's inaction, coupled with the clear benefits of the right-to-know program, convince us that it is time to expand the law. The public has a right to know more.

On June 6, 1991, I, along with Senator DURENBERGER, directed staff to circulate a discussion draft of legislation that would expand the emissions reporting requirements of the current law. The thrust of this draft was to require reporting on more chemicals and by other types of facilities. The additional chemicals the discussion draft included were primarily substances listed under other environmental programs.

The discussion draft was circulated to various interested parties—representatives from industry, environmentalists, the administration, States, and others. On June 27, 1991, the Subcommittee on Superfund, Ocean and Water Protection, which I chair, held a hearing on the discussion draft and the expansion of the right-to-know program. The hearing gave us an opportunity to hear the views of some of these parties about right-to-know expansion and the discussion draft. In addition, at the hearing I welcomed additional comments from other interested parties.

Generally speaking both GAO's June report and testimony, as well as the report by environmentalists and their testimony, lent strong support for expanding the coverage of the right-to-know program. Although comments from industry as well as EPA raised questions about the specific proposals in the discussion draft, what was generally lacking in the criticism of the draft was concrete alternative proposals aimed at achieving the same goals of more comprehensive reporting. Although EPA indicated it would be completing analyses of factors relevant to the expansion of right to know, as of this date we have not received any such analyses.

In some of the comments, however, a strong case was made for providing a mechanism for giving industry an incentive to reduce emissions of chemicals that presented higher relative risks than other alternative substances. The bill therefore in addition to the current reporting requirements imposed on EPA under the current law and the other additional requirements of the legislation, adds a provision requiring EPA to the extent practicable, to categorize chemicals by relative hazard or to rank chemicals by hazard within a category of chemicals. This provision is based on section 112(g) of the Clean Air Act as revised in 1990. This section requires EPA to rank hazards of air toxics. EPA would exclude increases in emissions of an air toxic from being classified as a "modification" if it is offset by an equal or greater decrease of emissions of another air toxic which is ranked by EPA as being more hazardous.

This idea is incorporated into the bill to differentiate between hazards posed by the expanded list of chemicals which would be subject to reporting. The right-to-know and pollution prevention programs are designed to encourage decreases in the emissions and generation of toxic chemicals. But to the degree that different chemicals present different relative risks, and a manufacturer can choose between using a lower-risk substance, we should not discourage the more environmentally sound choice. This is not to say that the release of any substance covered by this law would be welcomed. But where the manufacturer can legally emit a substance, and where reporting requirements can be designed to encourage emissions that are more protective of the health and environment, we are attempting to accomplish this goal.

In addition, the bill addresses mass accounting. Mass accounting involves data about the use of toxic chemicals in industrial facilities and the generation of pollution to determine the efficiencies of use of toxic chemicals. Mass accounting can enhance pollution prevention efforts, lead to improved reporting under the right-to-know program and the Pollution Prevention Act, as well as stimulated companies to reduce their use of toxic chemicals.

Identifying the relative efficiency of the use of toxic chemicals by an industrial operation is valuable for pollution prevention efforts. It identifies less efficient operations that may need additional pollution prevention efforts. This will allow pollution prevention officials to identify priorities for pollution prevention efforts.

Mass accounting allows Federal and State agencies as well as industries to make more accurate toxic chemical release and toxic pollution generation reports. Officials can relate use data to pollution generation and release information to assist in determining the accuracy of the generation and release information.

Mass accounting information also provides information about the amount of toxic chemicals stored at the facility during the year and present in the product manufactured at the facility. This may help to reduce accidents involving toxic materials, worker exposure to toxic materials, and consumer exposure to products containing toxics.

I first authored provisions on mass accounting in the original right-to-know measures passed in the Senate in 1985. That provision was based on the New Jersey program, which has required facilities to report on their use of toxic chemicals as part of its right-to-know program, enacted in 1983. Although the Senate passed my mass accounting provision as part of the overall right to know and emergency planning legislation I authorized, due to pressure from the House, the mass accounting requirement was dropped in conference. Instead, the National Academy of Sciences was required to prepare a report on the utility of mass accounting.

That report, which was released earlier this year, concluded that mass accounting relies on information which is routinely collected. Moreover the report concluded that mass accounting can help identify waste reduction progress at individual facilities, can

help guide additional reduction techniques, and could be useful for assessing the reasonableness of reported released estimates. The report cited the New Jersey experience as a basis for its conclusions.

A few months ago, New Jersey passed the Pollution Prevention Act, which expanded the original New Jersey requirement by mandating that facilities report on their use of chemicals and generation of toxic pollutants not only at a facility-wide level, but also on a targeted production process level. This requires the New Jersey Department of Environmental Protection and Energy to develop criteria for determining which production processes should report mass accounting information. Having use and generation data at each targeted production level will provide a better level of precision than reporting on a facility-wide basis for facilities with numerous production processes.

The discussion draft of the Federal Right To Know More Act included a facility-wide mass accounting provision taken from the 1985 Senate passed measure to which I have referred. In light of the New Jersey experience, I decided to expand this provision along the lines of the New Jersey approach.

The mass accounting provisions in the bill are based on the new New Jersey Pollution Prevention Act. This State law was widely hailed by both environmentalists and industry as an effective mechanism of reducing toxic pollution. It also included provisions to require industry to prepare pollution prevention plans. I have consponsored S. 716, which was introduced by Senator LIEBERMAN, and which contains a pollution planning requirement. I look forward to working with Senator LIEBERMAN in moving this measure forward.

Testimony in the hearing raised some concerns from industry, which we heard during the 1985-86 drafting of the original right-to-know program, about the impact of mass accounting on the confidentiality of business information. This concern is addressed in two ways. First, the bill makes the trade secrets provisions from the right-to-know law applicable to information reported under the legislation. Second, as was the case with the New Jersey law, to protect confidential business information, the bill requires use information at the targeted production process level to be reported on a per unit of production basis. This masks the total amount of toxic chemicals and the level of production at the production line.

Another modification that I made to the discussion draft relates to the newly created release-transfer threshold for reporting. In addition to the thresholds currently in the law, the discussion draft proposed a threshold based on the release of chemicals to the environment or to an offsite facility. The discussion draft sought comments on the actual numerical threshold. Staff discussions with representatives from the environmental community showed some interest in pursuing the levels of 100 pounds per year for metals and metal compounds, and 2,000 pounds per year for the other chemicals subject to reporting under the bill. These were the thresholds used in the House bill H.R. 2880, the right-to-know expansion provisions of which were modeled on our discussion draft.

Seeing some value in developing additional information on the thresholds as well as the need to make sure thresholds are promptly in place, I modified the discussion draft based on the approach we took in section 302 of the Emergency Planning and Community Right to Know Act. The net result is that the bill requires facilities to report if they discharge into the environment or transfer to offsite facilities amounts of the expanded list of chemicals—that is the current section 313 chemicals and those chemicals added by this act—greater than a threshold set by EPA within 90 days of enactment. EPA would be required to use the criteria currently in section 313(d)(2) for listing and delisting chemicals to set such new thresholds, and could set such thresholds based on classes of chemicals or categories of facilities. Failure to publish an interim final rule within 90 days setting such thresholds would result in the immediate application of the previously noted legislatively mandated thresholds—100 pounds per year for metals or metal compounds; 2,000 pounds per year for other chemicals.

Another modification to the discussion draft responds to the concern about how quickly the new reporting requirements would take effect, a concern that was voiced by both EPA and industry. The discussion draft was generally effective upon enactment. But the bill as modified will not become generally effective until the submission of forms for calender year 1993, which is required on or before July 1, 1994. This will allow one complete reporting cycle to pass before the new measures take effect. In the case of the requirements relating to targeted production process reporting, these will not take effect until the July 1, 1995 submission of forms, following the requirement for EPA to develop the regulation on targeting criteria. In the case of the chemicals listed pursuant to section 3(a)(3)(F) and (H), subject to the conditions articulate in section 3(a)(4), these would not be subject to reporting requirements until calender year 1994, with the submission of forms required on or before July 1, 1995, unless such chemicals are delisted prior to the application of the reporting requirements.

A final issue raised in the discussion draft was the notion of some kind of national security waiver potentially applicable to Federal facilities, all of which are explicitly subjected to right to know reporting requirements under this bill. Although we received no specific comment on what was essentially just a section heading raising this issue in the discussion draft, I added language to allow the President to waive compliance with reporting requirements only if the President determines the waiver is necessary in the paramount interest of the United States. This provision, which is modeled on section 6001 of the Solid Waste Disposal Act, is meant to create an extremely heavy burden to achieve such a waiver. The provision makes such waivers expire after each reporting period, and requires the President to make new determinations each time such a waiver is sought. In addition, the provision requires Federal Register notice each time a waiver is granted. It also allows any person to petition for review of a waiver decision, and requires the President to act on such a petition within 45 days, including publishing such action, along with reasons for such action, in the Federal Register.

Federal facilities should be treated essentially the same as private facilities under the right-to-know program, and with the very narrow paramount interest waiver I have drafted, I believe this goal will be achieved by the bill.

Finally, I would like to note section 5 of the bill, which requires EPA to establish and implement a grants program, aimed at assisting States, and particularly local entities, in implementing the requirements of the Emergency Planning and Community Right to Know Act, as well as the bill itself. This grants provision is modeled on a similar provision I authored in the fiscal year 1988 Senate appropriations bill for the Department of Housing and Urban Development—Independent Agencies, H.R. 2783. This provision, which was adopted in committee, and passed by the Senate, was aimed at helping our States and localities get the job done on emergency planning and right to know. Unfortunately, during conference the House succeeded in deleting this provision. But I am hopeful that we can successfully pursue such a program in this new legislation.

Mr. President, in putting together this bill we have tried to take account of the concerns that were raised by the interested parties from all sides. As is often the case in drafting legislation, it is difficult to accomodate fully all the positions that are advocated. When and if EPA finishes the promised analysis to which I previously referred, we will certainly want to examine it. In addition, should the introduction of this bill prompt more in industry to develop concrete alternative proposals to the bill's provisions, we will take a close look at them. And should the environmentalists and others have additional

ideas on ways to improve the measure, our minds and doors are open to all good ideas.

Mr. President, as the Senate author of the original right-to-know law, I am eager now to advance improvements to that program. I look forward to working with Senator DURENBERGER, as well as the other Members of the Committee on Environment and Public Works to move the measure forward. In addition, I look forward to continued collaboration with Congressman SIKORSKI, who as previously noted, has modeled the right-to-know provisions of H.R. 2880, on the discussion draft we used to develop the bill today.

As the Committee on Environment and Public Works considers the reauthorization of the Resource Conservation and Recovery Act, I look forward to working with Senator BAUCUS and others on the committee to incorporate the bill in that vehicle, and to reviewing carefully any additional ideas on how to improve the measure.

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

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

S. 2123

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 "Right to Know More Act of 1991".

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "byproduct" means all chemicals that are subject to the reporting requirements under this Act, and that enter any waste stream (or are otherwise released into the environment) prior to recycling, treatment, or disposal.

(3) The term "environment" has the meaning given such term under section 329(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11049(2)).

(4) The term "facility" means all buildings, equipment, structures, and other items which are located on a single site or contiguous or adjacent sites and which are owned or operated by the same person (or by a person which controls, is controlled by, or under common control with, such person). For the purposes of this Act, the term includes any Federal facility and any facility used in the transportation of chemicals and storage incident to such transportation, including any facility used in the transportation of natural gas.

(5) The term "Federal facility" means any facility owned or operated by a department, agency, or instrumentality of the United States.

(6) The term "offsite waste management facility" shall include any facility that recycles waste chemicals or burns such chemicals as a fuel.

(7) The term "release" has the meaning given such term under section 329(8) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11049(8)).

(8) The term "toxic chemical" means a substance on the list described in section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(c)).

(9) The term "person" has the meaning given such term under section 329(7) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11049(7)).

(10) the term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

SEC. 3. RIGHT TO KNOW MORE.

(a) SUPPLEMENTAL REPORT TO TOXIC RELEASE INVENTORY.—

(1) IN GENERAL.—(A) Subject to subsection (e) of this section, and except as provided in subsection (a)(4) and subsection (d)(4), notwithstanding any other provision of law, each owner or operator of a facility subject to the requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) that meets the applicable requirements of paragraph (2) of this subsection shall include, with each such filing (beginning with the submission of forms for calendar year 1993 that is required on or before July 1, 1994), comparable supplemental information.

(B) The comparable supplemental information described in subparagraph (A) shall be submitted in the same manner and in a format substantially similar to the format of the form required under such section 313 (as determined by the Administrator) with respect to releases and transfers from such facility of any chemical—

(i) described in paragraph (3) of this subsection if such chemical is not otherwise listed pursuant to such section 313; or

(ii) listed pursuant to such section 313 with respect to which—

(I) an owner or operator of a facility does not use, manufacture, or process (as described in such section 313) at a level that meets the applicable threshold requirement for reporting under such section 313 (as described in regulations promulgated pursuant to such section 313); but

(II) releases to the environment or transfers to an offsite facility in an amount described in paragraph (2)(B).

(2) CHEMICALS SUBJECT TO REPORTING.—(A) Notwithstanding any other provision of law, with respect to any chemical described in paragraph (3), any facility that—

(i) uses, manufactures, or processes (as described in such section 313) the chemical at a level that meets the applicable threshold requirement for reporting under such section 313 (as described in regulations promulgated pursuant to such section 313); or

(ii) releases to the environment or transfers to an offsite facility any such chemical in an amount described in subparagraph (B), shall be required to submit a supplemental report under this subsection.

(B)(i) Within 90 days after the date of the enactment of this Act, the Administrator shall—

(I) publish an interim final regulation that establishes a threshold quantity for releases to the environment or transfers to an offsite facility for each chemical subject to reporting requirements under this Act, taking into account the criteria described in section 313(d)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)(2)); and

(II) initiate a rulemaking in order to publish final regulations that establish such a threshold quantity for each such chemical.

(ii) At the Administrator's discretion, such threshold quantities may be based on classes of chemicals or categories of facilities.

(iii) If the Administrator fails to publish an interim final regulation that establishes such a threshold quantity for a chemical subject to reporting under this Act within 90 days after the date of the enactment of this Act, in the case of a metal or metal compound, the threshold quantity for the chemical shall be 100 pounds per year, and in the case of any other chemical, such threshold quantity shall be equal to 2,000 pounds per year.

(iv) The Administrator may revise such threshold quantities under this subparagraph from time to time. Any such revision shall take into account the criteria of section 313(d)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)(2)).

(3) DESCRIPTION OF CHEMICALS.—The chemicals described in this paragraph are the following:

(A) Priority pollutants listed under regulations relating to steam electric power point source pollutants under the Federal Water Pollution Control Act (33 U.S.C. 1311 et seq.) (as listed in Appendix A of section 423 of title 40, Code of Federal Regulations, as in effect on the day before the date of the enactment of this Act, subject to any subsequent modifications of the list).

(B) Certain hazardous wastes identified and listed under regulations promulgated under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) (as listed in sections 261.33(e), 261.33(f), and Appendix VIII of part 261 of title 40, Code of Regulations, as in effect on the date of the enactment of this Act, subject to any subsequent modifications of the lists).

(C) Any chemical listed under section 112(b)(1), 112(r)(3), 602(a), or 602(b) of the Clean Air Act (42 U.S.C. 7412(b)(1), 42 U.S.C. 7412(r)(3), 42 U.S.C. 7671a(a), and 42 U.S.C. 7671(b), respectively).

(D) A pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 (u))—

(i) with respect to which the registration has been denied, cancelled (including voluntary cancellation following the Special Review process, as described in part 154 of title 40, Code of Federal Regulations, as in effect on the day before the date of the enactment of this Act), or is under suspension;

(ii) that is undergoing Special Review (as described in clause (i)) or is undergoing other administrative review (including for cancellation of use pursuant to section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d)); or

(iii) that is classified as a restricted use pesticide under section 3(d)(1) of such Act (7 U.S.C. 136a(d)(1)).

(E) Chemicals listed under certain regulations and proposed regulations under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) for which maximum contaminant levels have been proposed or promulgated, as listed—

(i) under section 141.11, 141.12, 141.51, or 141.61 of title 40, Code of Federal Regulations, (as in effect on the day before the date of the enactment of this Act, subject to any subsequent modifications); or

(ii) in the proposed regulations relating to national primary drinking water regulations published at 55 Federal Register 30370 on July 25, 1990, and at 54 Federal Register 22062 on May 22, 1989.

(F) Subject to paragraph (4) of this subsection, chemicals identified by the Carcino-

gen Assessment Group of the Environmental Protection Agency, the International Agency for Research on Cancer, or the National Toxicology Program as a known or probable human carcinogen.

(G) Extremely hazardous substances listed pursuant to section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11002(a)(2)).

(H) Subject to paragraph (4) of this subsection, chemicals listed in 90 California Regulatory Notice Register 990 (July 1990) as reproductive toxins.

(4) CONDITIONS FOR SPECIFIED LISTS.—Any chemical described in subparagraph (F) or (H) of paragraph (3) of this subsection that is not otherwise listed pursuant to such paragraph (3) or section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023), shall be subject to the reporting requirements under this Act beginning with the submission of forms for calender year 1994 that is required on or before July 1, 1995, unless, in accordance with the list revision procedures and criteria described in subsection (d) or (e) of section 313 of the Emergency Planning and Community Right-to-Know Act, the Administrator, by rule, deletes any such chemical from the lists of chemicals for which reporting is required under this Act.

(b) PARALLEL REPORT FOR CERTAIN FACILITIES NOT COVERED UNDER THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986.—Notwithstanding any other provision of law, any facility that employs 10 or more full-time employees that is not described in the Standard Industrial Codes listed in section 313(b) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 1023(b)), or that is otherwise exempt under section 313 of such Act from the reporting requirements of such section—

(1)(A) that meets the threshold requirements for reporting under such section 313 (as described in regulations promulgated pursuant to such section 313); or

(B) that releases to the environment or transfers to an offsite facility any chemical listed pursuant to section 313 in an amount greater than or equal to the applicable threshold quantity specified in subsection (a)(2)(B) of this section; or

(2)(A) that uses, manufactures, or processes (as described in such section 313) a chemical described in subsection (a)(3) of this section that is not listed pursuant to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 at a level equivalent to the applicable threshold requirement described in such section 313; or

(B) releases to the environment or transfers to an offsite facility any chemical described in subparagraph (A) of this paragraph in an amount greater than or equal to the applicable threshold quantity specified in subsection (a)(2)(B) of this section,

shall be required under this section to submit a report to the Administrator of releases to the environment of the chemicals listed under such section 313 in the same manner and in a format substantially similar to the format of the form required under such section (except that such report shall incorporate the additional reporting requirements described in this section).

(c) EXTENSION OF REPORTING REQUIREMENTS WITH RESPECT TO TRANSFERS TO OFFSITE WASTE MANAGEMENT FACILITIES.—Notwithstanding any other provision of law, any facility subject to the reporting requirements under this section or section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) shall be required to report all transfers of chemicals listed under this section or such section 313 to offsite waste management facilities.

(d) ADDITIONAL INFORMATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any facility subject to the reporting requirements under this section or section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) shall provide, at the time of reporting, the following additional information:

(A) The maximum hourly rate of release of emissions to the air or discharges into the water or discharges on the land of each chemical subject to reporting requirements during the reporting period.

(B) The cause, source, and frequency of releases that result in such maximum hourly rate being achieved.

(C) A compilation of annual input, accumulation, and output quantities of each chemical subject to reporting requirements under this Act at the facility, including the quantities produced, used, generated as byproduct, consumed, recycled onsite but out-of-process, transferred as product, or transferred as a constituent in products.

(D) For each targeted production process of the facility—

(i) the amount of each chemical used per unit of product and generated as byproduct per unit of product;

(ii) the amount present in the product per unit of product;

(iii) a description of the production unit, including the production process, product, and unit of product; and

(iv) the amounts manufactured (or otherwise created) and used, expressed as a range.

(E) Two-year and five-year goals for reduction in—

(i) each amount reported under clause (i) of subparagraph (D); and

(ii) the amounts manufactured, processed, otherwise used, and generated as byproduct at a facility.

(F) Identification of the type of toxics use reduction technique, or other factor, that reduced by 10 percent or more from the previous year any amount reported under clause (i) or (ii) of subparagraph (D).

(2) ADDITIONAL REPORTING REQUIREMENT.—In any case in which the owner or operator of a facility submits a report under this subsection for a calendar year which omits a chemical (subject to the reporting requirements under this Act) contained in a report for such facility for the calendar year preceding the calendar year being reported on, the owner or operator, for purposes of allowing the Administrator to track the availability or risks of alternative chemicals, shall—

(A) identify in the report any substance which is a replacement for the omitted chemical; and

(B) state whether the substance is a chemical subject to reporting requirements under this Act.

(3) CERTIFICATION.—Each report submitted under this subsection shall contain a certification signed by a senior management official of the facility with direct operating responsibility. The certification shall state that, subject to a penalty of perjury, the official has read the reports and such reports are, to the official's best knowledge and belief, true, complete, accurate, and prepared under a proper data accounting and planning system.

(4) DEADLINE FOR FIRST REPORTS.—The owner or operator of a facility with a targeted production process shall submit the information required under paragraph (1)(D) and paragraph I(E)(i) at the time of submission of any form required to be submitted for calendar year 1994 pursuant to this Act, on or before July 1, 1995.

(5) CRITERIA FOR TARGETED PRODUCTION PROCESSES.—Within 18 months after the date of enactment of this Act, the Administrator shall establish, by regulation, criteria pursuant to which an owner or operator of a facility shall identify targeted production processes for the purpose of focusing pollution prevention strategies on such targeted production processes. The criteria for the identification of targeted production processes shall be based on a consideration of the toxicity of specific chemicals used, generated, or released at the targeted production process, and shall require that a targeted production process be a production process that makes a significant contribution to the use, generation, and release of chemicals.

(e) MODIFICATION OF REPORTING FORM.—The Administrator shall modify the form required for purposes of reporting information under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) to the extent that he or she considers such modification necessary to include the additional information required. In addition, the Administrator shall, after notice and opportunity for comment, and not later than 18 months after the date of enactment of this Act, publish an identification, to the extent practicable, of the relative hazard to human health and the environment resulting from chemicals subject to reporting requirements under this Act, by or within category of the level of the hazard. In publishing data on amounts of such chemicals, the Administrator shall also report the data with respect to each chemical by or within category of hazard.

(f) REPORTING PROVISIONS.—The provisions of sections 322, 325(c), and 326 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11042, 11045(c), and 11046, respectively) shall apply to the reporting requirements under this section in the same manner as for the reports required under section 313 of such Act (42 U.S.C. 11023).

(g) AVAILABILITY OF DATA.—Subject to the requirements relating to trade secrets described in section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11042), the Administrator shall make data collected under this section publicly available in the same manner as for the data collected under section 313 of such Act (42 U.S.C. 11023).

(h) PROVISION OF INFORMATION TO HEALTH PROFESSIONALS.—

(1) IN GENERAL.—The supplying of information to health professionals under this section shall be carried out in the same manner as required with respect to health professionals under section 313 of such Act (42 U.S.C. 11023).

(2) SPECIAL ENFORCEMENT PROCEDURES.—Special enforcement procedures relating to a violation of requirements related to the provision of information to health professionals, described in section 325(e) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11045(e)) shall apply to any such violation under this section in same manner as required under such section.

(i) FRIVOLOUS CLAIMS.—Civil and administrative penalties assessed for frivolous claims under this section shall be assessed in the same manner as for assessments of such penalties under section 325(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11045(d)).

(j) PROCEDURES FOR ADMINISTRATIVE PENALTIES.—The procedures for administrative penalties described in section 325(f) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11045(f)) for violations under such Act, shall apply in the same manner to administrative penalties under this section.

(k) STUDY OF ELECTRONIC METHODS TO IMPROVE REPORTING.—

(1) IN GENERAL.—The Administrator shall conduct a study of methods of encouraging the reporting of information under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023)) and this Act through the use of computer telecommunication and other means. Such study shall identify methods to—

(A) increase the rate at which such information is made available to the public;

(B) improve the accuracy of such information;

(C) improve public accessibility to such information; and

(D) enhance the overall efficiency of the information reporting and collection process.

(2) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Administrator shall submit a report of the findings of the study described in paragraph (1) and plans for implementing methods to improve reporting to the appropriate committees of the Congress.

(l) EXEMPTION FOR FEDERAL FACILITIES BASED ON PARAMOUNT INTEREST.—

(1) IN GENERAL.—The President may waive compliance with the reporting requirements of this Act if the President determines that the waiver is necessary in the paramount interest of the United States. Any such waiver shall be for a period of not more than one annual reporting period under this Act, except that additional waivers may be granted upon new determinations by the President.

(2) NOTICE.—Upon issuance of such waiver, the President shall publish in the Federal Register a notice of the granting of the waiver and an explanation of the reasons for granting the waiver, unless the President determines that such publication would be contrary to the paramount interest of the United States. If the President makes such determination, the President shall provide notice to the Congress of such determination.

(3) PETITION.—Any person may petition the President to rescind any waiver granted under this subsection. The President shall, within 45 days after receipt of the petition, accept or deny the petition, and publish in the Federal Register notice of the decision to accept or deny the petition. Such notice shall include the reasons for the decision.

SEC. 4. TOXIC RELEASE INFORMATION STUDY.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Director of the Office of Technology Assessment (hereafter in this section referred to as the "Director") shall, in consultation with the Administrator, conduct and complete a study of all matters relating to the provision to the public of toxic release inventory information described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023), and reports required under this Act (hereafter in this section referred to as "toxic release information").

(b) CRITERIA OF STUDY.—The study conducted by the Director shall include the following:

(1) A review of the methods by which toxic release information is made available to the public, with a concentrated emphasis on the computer data base described in section 313(j) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(j)).

(2) A review of the efficacy and cost-effectiveness of each method described in paragraph (1).

(3) The development of recommendations for more effective means to disseminate toxic release information, and to promote ease of public access to such information.

(4) The development of recommendations for alternatives to basing the publicly accessible data base in the T.O.X.N.E.T. system of the National Library of Medicine.

(c) REPORT.—Upon completion of the study described in subsection (a) of this section, the Director shall submit to the Administrator and to the appropriate committees of the Congress a report containing a detailed statement of the findings and conclusions of the study, together with such recommendations for such regulations and administrative actions as the Director, in consultation with the Administrator, considers appropriate to make improvements in the provision of toxic release information to the public.

SEC. 5. GRANT PROGRAM.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—(A) The Administrator shall establish a grant program to assist States, local governments, local emergency planning committees and State emergency response commissions (as described in section 301 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001)) in carrying out the provisions of subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively) and this Act.

(B) The Administrator shall implement the grant program under this section in coordination with the various offices of the Environmental Protection Agency having responsibilities for the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 and this Act (including the Office of Pesticides and Toxic Substances and the Office for Solid Waste and Emergency Response), and the Administrator shall ensure that the grant program established under this section shall be implemented in coordination with State emergency response commissions.

(2) APPLICATIONS.—(A) Not later than 2 months after the date of the enactment of this Act, the Administrator shall accept applications for grants under this section.

(B) The Administrator shall make a determination on a grant application not later than 45 days after the Administrator receives the application.

(b) GRANT REQUIREMENTS.—

(1) DISTRIBUTION.—The Administrator shall ensure that States shall make available to local governments or local emergency planning committees (as described subsection (a)) an amount equal to 75 percent of the amount of the grant to the State under this section for the purposes of assisting local governments and local emergency planning committees in carrying out the provisions of subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively).

(2) MATCHING.—(A) The amount of any grant awarded under this Act shall not exceed an amount equal to 80 percent of the cost of carrying out the activities authorized under the grant program.

(B) The remaining percentage of such costs shall be funded from non-Federal sources. Such sources may include amounts appropriated by the State for State activities or to finance activities of local governments or local emergency planning committees in carrying out subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively).

(3) CRITERIA.—The Administrator shall award grants under this section in proportion to State and local needs, as measured by such factors as the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State, the extent of potential exposure in a State of human beings and the environment to chemical substances and mixtures, and the population density of a State. The Administrator shall assure that State awards to localities or local emergency planning committees are in proportion to local needs as measured by factors similar to those described in the preceding sentence, including such factors as presence of substances, extent of potential exposure, and population density.

(c) STATUTORY CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this section shall be construed so as to preempt the ability of any State government or the government of a political subdivision of a State from funding activities conducted under subtitles A, B, and C of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 through 11005, 11021 through 11023, and 11041 through 11050, respectively) by other and additional means.

(2) OTHER PROGRAMS.—Nothing in this section shall affect the availability of appropriations to any Federal agency for any programs conducted by such agencies other than to the Environmental Protection Agency for the grant program described in subsection (a).

SEC. 6. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 7. EXTENSION OF POLLUTION PREVENTION REQUIREMENTS.

Notwithstanding any other provision of law, in addition to those owners or operators subject to requirements of section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. 13106), any owner or operator of a facility subject to any reporting requirement under this Act shall be subject the requirements of such section 6607. For the purposes of this section, in addition to the chemicals subject to the requirements of such section 6607, any chemical described in section 3(a)(3) of this Act shall be deemed a chemical subject to the reporting requirements of such section 6607.

SEC. 8. STATUTORY CONSTRUCTION.

Nothing in this Act shall be construed or interpreted—

(1) as preempting in any State or political subdivision of a State from imposing any additional liability or requirements; or

(2) to displace or diminish the responsibilities and liabilities under any other Federal law (whether statutory or common).

SECTION-BY-SECTION ANALYSIS OF RIGHT TO KNOW MORE ACT OF 1991

Section 1. Short Title: Right to Know More Act of 1991.

Section 2. Definitions.

Section 3—Subsections (a) and (b). Subsections (a) and (b) of section 3 are the core of the bill. These subsections impose require-

ments that supplement those already imposed by section 313 of Title III of SARA. These supplemental requirements would become generally effective beginning with the submission of forms for calendar year 1993 that is required on July 1, 1994 and would apply to facilities currently covered and to facilities outside the current SIC Codes of 20–39, including facilities currently exempt pursuant to the transportation exemption of section 327 (see section 2 definition of "facility"). These subsections apply these supplemental requirements in the following ways:

A. Impose New Requirements for Facilities Already Covered. Those facilities currently subject to Right to Know (e.g. those with 10 or more employees, that fall in the Manufacturing SIC Codes 20–39, and use/manufacture/process specified amounts of the currently listed chemicals), would also be required to do the following:

1. New Substances. These facilities would be required to report on their emissions of an additional list of chemicals of which they manufacture/process more than 25,000 pounds annually, or use 10,000 pounds annually. The additional list of chemicals consists of those chemicals currently not listed under section 313 but listed under the following environmental programs:

a. Priority Pollutants listed pursuant to the Federal Water Pollution Control Act.

b. Certain hazardous wastes identified and listed under specified regulations promulgated under the Solid Waste Disposal Act.

c. Chemicals listed under specified sections of the Clean Air Act.

d. A pesticide 1) with respect to which the registration has been denied, cancelled (including voluntarily following Special Review), or is under suspension; 2) that is undergoing Special Review (as described in 40 CFR Part 154) or undergoing other administrative review pursuant to FIFRA section 6; or 3) that is classified as a restricted use pesticide under section 3(d)(1) of FIFRA.

e. Chemicals listed under specified regulations of the Safe Drinking Water Act.

f. Effective for calendar year 1994 and required for the submission of forms due on or before July 1, 1995, chemicals identified as a known or probable human carcinogens by the Carcinogen Assessment Group of EPA the International Agency for Research on Cancer, or the National Toxicology Program, unless in accordance with the list revision procedures and criteria of section 313(d) or section 313(e) of SARA Title III, unless the Administrator by rule deletes any such carcinogen (not otherwise listed) from the list of chemicals for which reporting is required under this Act.

g. Extremely Hazardous Substances listed under section 302 of Title III of SARA.

h. Effective for calendar year 1994 and required for the submission of forms due on or before July 1, 1995, chemicals listed as reproductive toxins by the California Safe Drinking Water and Toxic Enforcement Act of 1986, unless in accordance with the list revision procedures and criteria of section 313(d) or section 313(e) of SARA Title III, unless the Administrator by rule deletes any such reproduction toxins (not otherwise listed) from the list of chemicals for which reporting is required under this Act.

2. New and Additional Threshold for Reporting. Currently covered facilities would also be subject to a new threshold for reporting. In addition to the current threshold, facilities would be required to report if they discharge into the environment or transfer to offsite facilities amounts of the expanded list of chemicals (i.e. the current section 313 chemicals and those chemicals added by this Act) greater than a threshold set by EPA within 90 days of enactment. EPA would be required to use the criteria currently in section 313(d)(2) for listing and delisting chemicals to set such new thresholds, and could set such thresholds based on classes of chemicals or categories of facilities. Failure to publish an interim final rule within 90 days setting such thresholds would result in the immediate application of legislatively mandated thresholds (100 pounds per year for metals or metal compounds; 2000 pounds per year for other chemicals).

B. Bring in a New Universe of Facilities. Section 3 would also require an additional universe of facilities, including Federal facilities (see definitions section of bill), regardless of which SIC Codes they fall under, to report the same information under the same conditions (e.g. minimum 10 employees, same chemical thresholds) as those manufacturing facilities reporting under Right to Know, including the new transfer-release threshold discussed above.

Section 3—Subsections (c)–(k). Subsections (c) through (k) of section 3 make a number of other modifications to the reporting requirements, the primary ones being the following:

A. Transfer Offsite. Closing the so-called recycling loopholes, subsection (c) would require reporting of transfers to all offsite waste management facilities.

B. Additional Information. Subsection (d) would require reports of peak air, water and land releases—i.e. the maximum hourly rate of such releases—and the cause, source, and frequency of such releases. Subsection (d) also requires reporting the compilation of annual input, accumulation, and output quantities of each chemical subject to reporting requirements at the facility, including the quantities produced, used, generated as byproduct, consumed, recycled onsite but out-of-process, transferred as product, or transferred as a constituent in products. This subsection also requires that for each targeted production process of the facility that additional specified information be reported for calendar year 1994 with the submission of forms required on or before July 1, 1995.

Section 4. This section requires the Director of the Office of Technology Assessment [OTA], in consultation with EPA to conduct a study of ways to enhance the provision to the public of the national emissions data.

Section 5. This section requires and authorizes EPA to make grants for each of the years FY 1992–96 to assist States, local governments, local emergency planning committees, and State emergency responses commissions in carrying out all subtitles of the Emergency Planning and Community Right to Know Act, as well as the requirements of the bill. Such grants must be awarded in a manner that assures that States make 75 percent of all such grant receipts available to local governments or local emergency planning committees.

Section 6. This section authorizes such sums as be necessary to carry out this Act.

Section 7. This section specifies that the reporting requirements under the Pollution Prevention Act of 1990, in addition to their current application to the current section 313 universe of owners, operators, and chemicals, will also be applicable to all owners or operators as well as chemicals subject to the expanded reporting requirements under the Right to Know More legislation.

Section 8. This section makes clear that the bill is not preemptive of State law, and that it does not diminish or displace requirements under other Federal law.●

By Mr. BUMPERS:

S. 2124. A bill entitled the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991"; to the Committee on Foreign Relations.

BALLISTIC MISSILE, NUCLEAR, CHEMICAL, AND BIOLOGICAL WEAPONS NONPROLIFERATION SUPPORT ACT OF 1991

● Mr. BUMPERS. Mr. President, today I am introducing the "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991." I ask unanimous consent that the bill and some explanatory language be printed in the RECORD at the conclusion of my remarks.

This bill is a modification of the amendment that I offered to the Defense appropriations bill in September and which was accepted. Sadly, that amendment was dropped for jurisdictional reasons in conference, though the conferees made it quite clear that they supported the intent of the amendment. I ask unanimous consent that the text of the fiscal year 1992 Defense appropriations conference report dealing with this subject be printed in the RECORD at this point.

Mr. President, I have expanded the scope of my earlier amendment in two ways. First, I include ballistic missile technology as well as nuclear, chemical, and biological weapons. While not weapons of mass destruction themselves, ballistic missiles are a force multiplier for other weapons of mass destruction. Had Saddam Hussein's Scuds carried nuclear warheads, no one would be talking about the great success of the Patriot missile.

Second, I am including North Korea as well as Iraq. Recent press reports about North Korea's nuclear potential have been very disturbing. These nuclear developments have led Defense Secretary Cheney to delay the implementation of phase II of United States troop withdrawals from South Korea. Even more disturbing have been reports that German companies are assisting North Korea's nuclear weapons program. We were fortunate in stopping Iraq. We may not be so lucky with North Korea.

My bill would bar imports from those companies that have knowingly provided assistance or support to the missile or nuclear/chemical/biological weapons programs of Iraq or North Korea. It also urges the President to get other countries to adopt a similar restriction, and to halt the actions of companies within their borders that are providing such assistance.

It is my hope that the Senate will act on this bill early in 1992 and give the President this powerful new weapon to fight one of the most important security threats of this post-cold war era. My bill will not solve the whole problem, but it will make an important start. I urge my colleagues to join me in this effort.

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

S. 2124

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 "Ballistic Missile, Nuclear, Chemical, and Biological Weapons Nonproliferation Support Act of 1991."

SEC. 2. LIMITATION.

Notwithstanding any other provision of law, no goods or services shall be imported into the United States or its territories or possessions that are produced or provided by companies that the President certifies to the Congress pursuant to the passage of this bill as having knowingly participated in the Iraqi or North Korean programs to develop ballistic missiles or nuclear, chemical, or biological weapons.

SEC. 3. INTERNATIONAL COOPERATION.

The President should request that other countries enact similar restrictions and take other appropriate steps, and strongly encourage the governments of those countries in which companies have provided such assistance to Iraq or North Korea to halt further such assistance.

SEC. 4. DURATION OF THE ACT.

This limitation shall remain in force for a period of 10 years after the date of enactment of this Act.

REPORT ON ASSISTANCE TO IRAQ

Amendment No. 192. Deletes Senate provision prohibiting certain imports to the United States. The conferees are concerned over reports that Western companies provided assistance to Iraq in its nuclear, biological, chemical (NBC), and ballistic missile programs. The Senate bill contained language giving the President the authority to bar for a period of 10 years the imports of companies that knowingly assisted Iraq in its programs for the development of weapons of mass destruction. The conferees reluctantly decided to drop this language for jurisdictional reasons only. The conferees wish to express their strong support for the intent of this provision and hope that it will be adopted on a suitable vehicle.

To further underscore their concern, the conferees request that the President provide, in both classified and unclassified versions, a report to the Appropriations Committees of the House and the Senate based on recent information, that includes an assessment of the contribution that these companies made to Iran's NBC and ballistic missile capabilities and a listing of these companies. The companies should include those that provided financial services, transportation, and other essential services as well as hardware and software support.●

By Mr. MCCONNELL:

S. 2125. A bill to lift the trade embargo against Vietnam if certain conditions are met; to the Committee on Banking, Housing, and Urban Affairs.

UNITED STATES-VIETNAM TRADE RELATIONS ACT

● Mr. MCCONNELL. Mr. President, although I hardly expect the Senate to take up this legislation now that we have come to the end of the session, I hope it offers a beginning point for discussion between the administration, the business community, and Members of Congress interested in Indochina and particularly Vietnam.

The bill I am introducing attempts to bridge the differences between those members of the business community who would like to see the trade embargo lifted tomorrow to further American commercial interests in an emerging market and those in the administration and Congress who would like to continue to use the embargo and normalization of relations as leverage in encouraging the Vietnamese on important policy priorities.

My legislation explicitly defines the expectations we have of the Vietnamese Government and requires the President report that these conditions have been met prior to lifting the embargo. However, my bill injects certainty into the process by establishing a date when the embargo will be lifted if the conditions are met.

There are three principle conditions which I have asked the President to report on. The first issue bears on the status of American POW's and MIA's. I cannot think of any issue which evokes a stronger and more emotional response than the question of our POW-MIA's. I was glad to see the select committee established to pursue the matter and believe the Members are off to a strong start in their inquiry. I am also committed to guaranteeing that the Vietnamese fully cooperate in resolving all outstanding cases and returning recovered and recoverable remains.

I also think progress on identifying and releasing those people held in political reeducation camps must be addressed. While we are no longer looking at the thousands of victims we were a matter of years ago, every person who is being detained because of an association with or loyalty to the United States must be released.

Finally, the Vietnamese must continue to actively support the U.N. peace agreement and transition to democracy in Cambodia. Their role and responsibility to see the process through to successful elections should be a factor in any changes in their political or economic relationship with the United States.

Having laid out the conditions, I also must add that I think the business community has legitimate concern about being shut out of an important emerging Asian market. Without some confidence that they will be given an opportunity to act on contracts—to really close deals—they are at a distinct disadvantage compared with many of America's trade competitors. The Japanese, French, Canadians, the British to name just a few do not observe a trade embargo with Vietnam. In fact, foreign investment in Vietnam is estimated to be as high as $5 billion.

Mr. President, offering a date when business will be allowed to move into Vietnam does not compromise our short- or long-term leverage. There are other important international lending and trading privileges such as most-favored-nation status which might be extended at some point in the future. We will continue to have options and opportunities available to offer Vietnam an incentive to make serious progress on the agenda of concern to this country.

However, given our major trade deficit, I think we should do what we can to assure American companies have access to a market where they have obvious strengths. Vietnam needs what American companies are good at—telecommunications, energy exploration and development, banking and infrastructure, and construction projects. American companies simply are not players in this important trade game—they are benched as they watch time and opportunity slip by.

I am hopeful that this legislation will guarantee the Vietnamese stay engaged in the peace process as they fulfill their absolute obligations to resolve POW-MIA cases and release political detainees. Should these conditions be met, it would seem reasonable to offer the American business community the assurance that they will have an opportunity on a specific date to close negotiations and begin to trade with Vietnam.●

By Mr. SPECTER:

S. 2126. A bill to extend the temporary suspension of duties on L-alanyl-L-proline, also known as Ala Pro; to the Committee on Finance.

S. 2127. A bill to suspend temporarily the duty on {3R-{3-alpha(R); 4-beta}}-4(acetyloxy)-3-{{(1,1-dimethyl ethyl) dimethyl-siyl}oxy}ethyl}-2-azetidinone; to the Committee on Finance.

S. 2128. A bill to suspend temporarily the duty on 3-chloro peroxybenzoic acid; to the Committee on Finance.

S. 2129. A bill to suspend temporarily the duty on composite vials of timolol maleate/pilocarpine solutions and diluents; to the Committee on Finance.

SUSPENSION DUTY ON CERTAIN CHEMICALS

Mr. SPECTER. Mr. President, today I am introducing legislation that will suspend temporarily the respective duty on the following chemicals or materials: L-alanyl-L-proline, also known as Ala Pro; acetoxy azetidinone; 3-chloro peroxybenzoic acid, also known as MCPBA; and composite vials of timolol maleate/pilocarpine hydrochloric solution. Merck & Co., Inc. is seeking these duty suspensions for its operations in West Point, PA, and Danville, PA in order to allow it to remain competitive in the world marketplace with its respective products, namely Vasotec, PRIMAXIN/TIENAM, Prilosec, and Timpilo.

With regard to these products Mr. President, I am informed that Vasotec is one of the world's leading medicines for the treatment of hypertension. For

many patients, Vasotec is also highly effective adjuntive therapy in management of heart failure.

Merck represents that its PRIMAXIN/TIENAM formulations have a broad spectrum of activity against gram-positive and gram-negative aerobic and anaerobic bacteria including strains resistant to penicillin, cephalosporins, and aminoglycosides.

As for Prilosec, I am informed that it is for a new class of gastrointestinal drug called acid pump inhibitors. It is approved for use in treating poorly responsive gastroesophageal reflux disease [GERD], severe erosive esophagitis, and conditions such as Zollinger-Ellison syndrome.

I am also informed that Timpilo is a combination formulation not manufactured by anyone in the U.S. and is used to lower intraocular pressure in the treatment of glaucoma.

As you are aware, Mr. President, duty suspension legislation is routinely adopted by Congress where no unfair competitive advantage, vis-a-vis other U.S. companies or industries, is gained by the beneficiary of such legislation. In this regard, I am informed that Merck & Co., will not gain any such advantage by any of the bills that I am introducing today. My staff has consulted with the Commerce Department's Office of Industrial Trade, the House of Representatives' Ways and Means Subcommittee on Trade, which has jurisdiction over the respective companion bills, H.R. 1857, H.R. 1942, H.R. 1935, and H.R. 3719, and with the offices of Representative LARRY COUGHLIN, the sponsor of H.R. 1857 and H.R. 3719, Representative GEORGE GEKAS, the sponsor of H.R. 1935, and Representative PAUL KANJORSKI, the sponsor of H.R. 1942. Each such office has informed my staff that there is no domestic opposition to Merck & Co.'s duty suspension requests.

Mr. President, Merck & Co. represents that without the requested duty suspensions, it is faced with operating at an economic disadvantage vis-a-vis its respective European and Japanese competitors because none of the chemicals or materials for which it seeks duty suspensions are manufactured here in the United States. For instance, Merck represents that it must pay a duty on Ala Pro that it imports from French and Japanese manufacturers. Similarly, acetoxy azetidinone is imported from Japan; MCPBA is imported from Belgium; and the composite vials of timolol maleate/pilocarpine hydrochloric solution and diluent are imported from France. Each of these, I am told, are also subject to import duty.

In sum, Mr. President, without these duty suspensions, the ability of Merck & Co., Inc. to preserve its integrity and continue to compete in the world marketplace while maintaining its facilities in West Point and Danville, Pennsylvania is made more difficult.

For the foregoing reasons, Mr. President, I, therefore, urge my colleagues to join me in supporting this legislation.

By Mr. DECONCINI (for himself and Mr. HATCH):

S. 2130. A bill to amend title 35, United States Code, to permit separate patent extensions for each product under a patent which is subject to full regulatory review and approval; to the Committee on the Judiciary.

PATENT REVIEW AND APPROVAL

• Mr. DECONCINI. Mr. President, I rise today to introduce with my distinguished colleague from Utah, Senator HATCH, a narrow but important amendment to one of the most significant pieces of legislation enacted by Congress in many years—the Drug Price Competition and Patent Restoration Act of 1984. That legislation will ultimately save American consumers billions of dollars. Besides providing massive savings to our citizens, especially elderly citizens, who must of necessity consume an inordinate share of prescription drugs, the act increases incentives to the innovative, research-based pharmaceutical community to develop new drugs that would not otherwise become available.

It has been almost 7 years since the act's passage and there have been no amendments to it. The bill we offer today in no way modifies or disturbs that most delicate balance between research-based pharmaceuticals, generic products, and the public. We believe that it rectifies a narrow consequence of the act that was unintended in that it was unanticipated.

At the heart of the 1984 act lies an elegantly simple quid pro quo. In return for additional years of patent life to compensate for the difficult, expensive, and time-consuming FDA drug-approval process, the pharmaceutical industry agreed to support wholesale changes in both the law and the rules surrounding the approval by FDA of generic versions of off-patent drugs.

Surrounding that seemingly simple core stands an extremely complex legislative edifice. While making patent extensions available to offset legitimate delays and loss of patent life, Congress also wanted to ensure that companies would not be able to use the law to extend a patent forever and thus unnecessarily prolong their market position on pharmaceuticals covered by these patents.

Toward this end, the act provides that any patent can receive only one extension. This was done to avoid the possibility of old patents being kept alive by claiming new uses for the same drug. This, of course, is only one of the elements in the 1984 act designed to prevent evergreening. However, it is the focus of the legislation that Senator HATCH and I are introducing, today.

In crafting the 1984 act, it was assumed that any particular patent would cover only one drug. It was certainly not anticipated that one patent would actually encompass two or more separate new drugs that is, new chemical entities each requiring a full, separate and independent review by the FDA. Indeed, such situations rarely occur.

Mostly, they arise within university research departments where the researchers are conducting seminal research leading to broad, landmark inventions. These researchers are more interested in pursuing their basic conceptual research and publishing their results for the benefit of the scientific community than they are in pursuing the various potential commercial applications. Because of this, they must file patent applications promptly to protect rights that would be lost or forfeited by publication.

Rarely do these researchers direct their work to identifying particular commercial embodiments that enable them to file separate patent applications on the various commercial embodiments of their broad invention.

Thus, university researchers tend, therefore, to patent these fundamental discoveries early, too early to appreciate the full commercial implications of their discoveries. These pioneer patents will contain broad claims that will cover many potential commercial embodiments. When the university later tries to find companies willing to commit the millions required to take additional embodiments of the broad invention through the process of becoming a drug, these efforts are stymied by the 1984 act preventing any patent—regardless of the fact that it may encompass more than one drug—from having more than one extension.

One of the first questions a company will ask is whether the drug will ultimately qualify for patent extension. Given the high risks, long lead times and large sums of money involved, the few years of patent extension created by the 1984 act often spell the difference between financial success and failure. If, for example, a university has a patent encompassing two separate drugs, only the one that is first granted patent extension can be extended. The other is out of luck. As a practical matter, this means simply that the university will not find a company willing to risk the sums required to bring the second drug to market. The university loses and thus the public loses.

This measure seeks to correct this anomaly by allowing a university held patent to be extended for more than one new drug if the new drug otherwise qualifies for patent extension. It should be well understood that we are not talking about extensions on top of extensions. If a patent, for example, expires in 1994 nothing in this bill can ex-

tend it beyond 1999 since the 1984 act allows a maximum of 5 years extension. The only difference my amendment would make is that more than one separate drug under that patent could receive an extension.

My objective, as well as that of Senator HATCH, is to see as many promising new drugs come to the American people as possible. And since this particular provision of the 1984 act hinders rather than promotes that process, we seek to change it.

Mr. President, our constitutionally mandated patent system provides for a 17-year life for a patent. It is rigid but predictable. Indeed, with the exception of the terms of the 1984 act, the patent system provides no flexibility with regard to the 17-year period.

Earlier this year, the Judiciary Subcommittee on Patents, Copyrights and Trademarks of which I am chairman, held a hearing on the issue of private patent extension requests. Unlike those measures, which require compelling circumstances and strict scrutiny, this legislation provides uniform and limited protection to a particular but important inventive sector—universities.

It is for that reason that I believe this legislative measure is reasonable. Most importantly, it promotes the objectives of the 1984 act without disrupting its delicate balance. It will promote the development of new drugs to benefit the American people and the world. Let me add that this measure will gain support throughout the university community in this country. I urge my colleagues to support it.

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

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

S. 2130

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 156 of title 35 is amended—

(1) in subsection (a):

(A) in paragraph (2), by inserting ", except as otherwise provided in subsection (i)" after "extended"; and

(B) in the second sentence, by inserting ", and in subsection (i)", after "and (5)"; and

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

"(i)(1) Notwithstanding the provisions of subsection (a)(2), if a claim or claim of any patent on an invention that was conceived or reduced to practice substantially in the performance of work at a qualified nonprofit organization cover more than one drug product, each of which is subject to a regulatory review period before its commercial marketing or use, the term of such patent may be separately extended for each such drug product.

"(2) For each extension obtained under this subsection (i), the rights derived from any patent the term of which is extended shall be limited to the drug product for which extension is sought.

"(3) As used in this subsection, the term "qualified nonprofit organization" means a university or other nonprofit institution of higher education incorporated or formed under the laws of a State, territory or possession of the United States".●

By Mr. MOYNIHAN:

S. 2132. A bill to require the Administrator of the Environmental Protection Agency to seek ongoing advice from independent experts in ranking relative environmental risks; to conduct the research and monitoring necessary to insure a sound scientific basis for decisionmaking; and to use such information in managing available resources to protect society from the greatest risks to human health, welfare, and ecological resources; to the Committee on Environment and Public Works.

ENVIRONMENTAL RISK REDUCTION ACT

● Mr. MOYNIHAN. Mr. President, on January 25 of this year I presided over a rather extraordinary hearing before the Committee on Environment and Public Works. Before us were Mr. Reilly, the capable Administrator of the U.S. Environmental Protection Agency, and Prof. Raymond C. Loehr, the Chairman of EPA's Science Advisory Board. Mr. Reilly and Professor Loehr told us of the results of months of study by three blue ribbon panels of scientific experts on environmental risk. The fruits of their efforts was a three-volume report entitled "Reduction Risk."

This report told us that our perception of risks, and our emphasis on reducing it, did not necessarily accord with the professional judgement of the experts. This is important, if true. We now believe, although it is difficult to calculate exactly, that we spend considerably more than $115 billion each year to protect the environment, and to clean it up where we failed to protect it in the past. If we are not spending this considerable sum on the most egregious risks, protecting the largest number of people, we need to consider soon how to do better.

To do this, we need to do two things. First, we need to consult the scientists to get the facts about how pollutants in the environment create risk and, not incidentally, which cause the greatest risk. Second, we need to have environmental statistics to tell us how the concentrations of pollutants in the environment are changing, and where, and what impact this is actually having on human health and natural resources.

We took an important step toward this goal last month when we passed S. 533, the Department of the Environment Act. In that bill, we created a Bureau of Environmental Statistics to be housed in a new Department of the Environment. Unfortunately, the measure was deficient, in that it failed to provide adequately for data collection, and I rose on that occasion to say that I would remedy that deficiency.

Today I am offering a bill, the Environmental Risk Reduction Act of 1991, that directs the Administrator of the Environmental Protection Agency to continue the process begun by Professor Loehr's panel, to constitute expert panels to advise the Administrator and Congress periodically on the best scientific assessment of relative risks, and the potential benefits of alternative ways of reducing such risks. The bill also creates an Environmental Monitoring and Assessment Program to be conducted by the EPA and coordinated with the activities of other Federal agencies with health and natural resource management responsibilities. This program would collect data on the exposure of humans, plants, and animals to pollutants and the resulting health of people and natural resources.

I look forward to working with my colleagues in the Senate to make sure that we are using our environmental protection resources wisely, and that we are getting what we pay for.

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. 2132

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 "Environmental Risk Reduction Act".

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) the cost of protecting the quality of the environment currently exceeds $115 billion per year;

(2) protecting society from global climate change, stratospheric ozone depletion, loss of biological diversity, and waste products from an ever-increasing population will cause these costs to increase in the future;

(3) although these costs are not necessarily excessive, they are too high to be used ineffectively or inefficiently;

(4) funds can only be used most effectively when they protect the largest number of people from the most egregious harm;

(5) ecological resources are extraordinarily valuable, and risks to them either directly or indirectly degrade human health and the economy;

(6) ranking of relative risks to human health, welfare, and ecological resources is a complex task, and is best performed by technical experts free from interests that could bias their objective judgment;

(7) applying technology and resources at the highest ranked risks within the intent of existing environmental statutes and identifying highly ranked risks not addressed by current statutes can significantly reduce risks to human health, welfare, and ecological resources;

(8) better risk assessment methodologies and a long-term commitment to collecting monitoring data on the condition of ecological resources and exposure of humans and ecosystems to pollutants are necessary to insure that the greatest risks can be identified, and that environmental statutes are accomplishing their intended results;

(9) ranking risks must be an ongoing process and reflect improvements in environmental data and scientific understanding; and

(10) effective and efficient strategies to reduce risks must quantify significant costs and benefits to the greatest extent possible.

(b) POLICY.—It is the policy of the United States that—

(1) Federal environmental protection activities administered by the Environmental Protection Agency shall attain the greatest risk reduction possible with the resources available; and

(2) the ability to reduce risks requires—

(A) accurate, quantitative estimates of the exposure of humans and ecosystems to all important risk factors;

(B) accurate techniques for predicting the effects of such exposures;

(C) an adequate understanding of technical, economic, social, and legal alternatives to reduce exposure to risk factors; and

(D) accurate estimates of the costs and benefits of alternatives for reducing risks.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(1) "Agency" means the Environmental Protection Agency;

(2) "Administrator" means the Administrator of the Environmental Protection Agency;

(3) "risk" means the probability of the occurrence of an event;

(4) "stressor" means a physical, chemical, or biological factor resulting from human activity and capable of causing an effect on human health, welfare, or ecological resources;

(5) "exposure" means the juxtaposition in time and space of some stressor with a human or other living thing or a non-living thing important to human welfare, such that an effect could result;

(6) "effect" or "response" mean a deleterious change in the condition of a human or other living thing, including but not limited to death, cancer or other chronic illness, decreased reproductive capacity, or disfigurement, or in the condition of a non-living thing important to human welfare, including but not limited to, destruction, degeneration, loss of intended function, and increased costs for maintenance;

(7) "ecological resources" means nonhuman living things and their interactions, including, but not limited to, lakes, streams, forests, wetlands, deserts, tundra, oceans, estuaries, beaches, grassland, agricultural areas, and vegetated urban and suburban areas;

(8) "sustainable" means the ability of ecological resources to maintain diverse, self-reproducing biological communities, capable of meeting current needs of mankind without compromising the ability of future generations to meet their own needs, including natural resources such as food, fiber, lumber, fish, and game; environmental services such as flood mitigation, water storage, and regulation of the chemistry of the atmosphere, oceans, and inland waters, and opportunities for recreation, scientific study; and appreciation of the beauty and diversity of nature;

(9) "likelihood" means the estimated probability that an effect will occur;

(10) "seriousness" means the intensity of effect, independent of the magnitude;

(11) "magnitude" means the number of people or the amount of ecological resources or other resources contributing to human welfare affected by exposure to a stressor;

(12) "irreversibility" means the extent to which a return to conditions prior to the occurrence of an effect are either very slow or will never occur;

(13) "uncertainty" means the quantifiable and unquantifiable potential error in the estimation of risk which is caused by the quality of data, or the assumptions used in risk estimation;

(14) "environmental statutes" means the environmental laws administered by the Agency which include within their intent protection of the environment, including but not limited to—

(A) title XIV of the Public Service Health Act (the Safe Drinking Water Act),

(B) the Clean Water Act,

(C) the Clean Air Act,

(D) the Federal Insecticide, Fungicide, and Rodenticide Act,

(E) the Toxic Substances Control Act,

(F) the Solid Waste Disposal Act,

(G) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Superfund Amendments and Reauthorization Act of 1986,

(H) the Marine Protection, Research, and Sanctuaries Act of 1972, and

(I) laws dealing with protection from sources of radiation.

SEC. 4. EXPERT ADVISORY COMMITTEES.

(a) IN GENERAL.—The Administrator shall act to use available resources under all environmental laws to reduce the most likely, most serious, most irreversible, highest magnitude risks to human health, welfare, and ecological resources through the careful assessment and ranking of relative risks and options for their management. In order to insure that such action is based on the best available scientific understanding, the Administrator shall establish and seek advice from two expert advisory committees to be established within the Science Advisory Board.

(b) COMMITTEE ON RELATIVE RISKS.—

(1) The Administrator shall establish a standing Committee on Relative Risks within the Science Advisory Board to provide expert advice on ranking the relative risks of different stressors to human health, welfare, and ecological resources.

(2) The Committee on Relative Risks shall consist of 15 experts selected by the executive committee of the Science Advisory Board. In the case of the initial selections, 5 shall be selected for a term of 2 years, 5 for a term of 4 years, and 5 for a term of 6 years. Thereafter, each individual selected shall serve for a term of 6 years.

(3) Such experts shall be chosen to represent a broad and balanced spectrum of experience in the areas of human health effects, ecological effects, and welfare effects.

(4) Members of the Committee on Relative Risks shall elect a chairperson who shall serve for a term of 24 months.

(5) After establishing appropriate criteria and guidelines, the Committee on Relative Risks shall—

(A) identify and rank the greatest environmental risks to human health, welfare, and ecological resources; incorporating the overall likelihood, seriousness, magnitude, and irreversibility of each risk;

(B) identify a common list of the greatest risks to human health, welfare, and ecological resources;

(C) assess the state of pertinent scientific understanding and other factors contributing to uncertainty in the ranking of relative risk.

(6) Risks shall be identified by the Committee on Relative Risks in such a way that the need for new laws, and priorities within the intent of existing laws, can be identified.

(7) As a Federal advisory committee, the Committee on Relative Risks shall hold open public meetings to solicit input from the public and other sources in accordance with the Federal Advisory Committee Act.

(c) COMMITTEE ON ENVIRONMENTAL BENEFITS.—

(1) The Administrator shall establish a standing Committee on Environmental Benefits within the Science Advisory Board to provide expert advice on estimating quantitative benefits of reducing risks.

(2) The Committee on Environmental Benefits shall consist of 15 experts selected by the executive committee of the Science Advisory Board. In the case of the initial selections, 5 shall be selected for a term of 2 years, 5 for a term of 4 years, and 5 for a term of 6 years. Thereafter, each individual selected shall serve for a term of 6 years.

(3) Experts shall be chosen to represent a broad and balanced spectrum of experience in areas including but not limited to economics, engineering, public administration, and health care.

(4) Members shall elect a chairperson initially, and at 24-month intervals after each major change in the Committee membership.

(5) After establishing appropriate guidelines and criteria, the Committee on Environmental Benefits shall estimate the value of—

(A) avoiding premature mortality;

(B) avoiding cancer, diseases, birth defects, and other health effects that reduce the quality of life;

(C) preserving biological diversity and sustainable ecological resources;

(D) an aesthetic environment;

(E) services performed by ecosystems (such as flood mitigation, provision of food or materials, or regulating the chemistry of the air or water) that, if lost or degraded, would have to be replaced by technology; and

(F) avoiding other risks identified by the Committee on Relative Risks.

(6) As a Federal advisory committee, the Committee on Environmental Benefits shall hold public meetings to solicit input from the public and other sources in accordance with the Federal Advisory Committee Act.

(7) The Committee on Relative Risks and the Committee on Costs and Benefits shall report their findings to the Administrator and to the appropriate committees of Congress on or before August 1, 1992, and prior to the expiration of each 24-month period thereafter.

(d) REIMBURSEMENT.—Members of the committees established under this section shall be reimbursed for travel, as authorized by section 5703 of title 5, United States Code, subsistence, and other necessary expenses incurred in the performance of the duties of the committees.

(e) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there is authorized to be appropriated $3,000,000 for fiscal year 1992, and each of the next following 6 fiscal years.

SEC. 5. RISK ASSESSMENT GUIDELINES.

(a) IN GENERAL.—The Administrator shall act to protect human health and the environment on the basis of careful assessments of risk and evaluation of options for reducing risks. In making decisions about the conduct of risk assessments, the Administrator shall balance the costs of such assessments and of damage to human health or the environment that might be caused by such delays against the savings to society expected to result from more cost-effective risk reduction options identified through the risk assessment process.

(b) RISK ASSESSMENT GUIDELINES.—The Administrator shall develop, and revise as appropriate, guidelines to ensure consistency and technical quality in risk assessments by specifying minimum standards for different

risk assessment approaches, depending on the scale of the problem, the level of scientific understanding, and the available data.

(c) INITIAL GUIDELINES.—The initial set of guidelines shall include risk assessments involving—

(1) human mutagenicity;

(2) human carcinogenicity;

(3) human developmental toxicants;

(4) human reproductive effects;

(5) human systemic toxicants;

(6) ecological effects of sources of pollutants from single sites;

(7) ecological effects of pollutants that originate from many sites;

(8) ecological effects from physical alteration of the environment;

(9) ecological effects of introducing non-native or genetically engineered organisms;

(10) pollutants affecting man-made materials; and

(11) pollutants affecting the productivity of soils.

(d) ADDITIONAL GUIDELINES.—The Administrator shall develop additional risk assessment guidelines as warranted by the state of pertinent scientific understanding and the need for sound decisions to protect human health, welfare, and the environment.

(e) MINIMUM REQUIREMENTS.—Risk assessment guidelines developed under this section shall include the following components:

(1) a hazard identification which demonstrates whether exposure to a stressor is or is not causally linked to an effect;

(2) an assessment that measures or estimates the exposure of well-defined individuals, populations, or materials to a stressor;

(3) an assessment which determines or estimates the magnitude of response of affected individuals, populations, or materials associated with different levels of exposure to a stressor under representative environmental conditions; and

(4) a risk characterization which provides an overall description of the nature and magnitude of probable effects resulting from alternative risk management options (including no action), together with a quantitative estimate of the attendant uncertainties.

(f) PUBLICATION IN THE FEDERAL REGISTER AND REPORTS TO CONGRESS.—The Administrator shall—

(1) publish all initial risk assessment guidelines in subsection (c) in the Federal Register within 60 months following the date of the enactment of this Act, and shall report annually to Congress on progress toward this goal; and

(2) publish new and revised guidelines in the Federal Register as necessitated by subsection (d).

SEC. 6. RISK ASSESSMENT RESEARCH.

(a) IN GENERAL.—The Administrator shall conduct a long-term core research program in environmental risk assessment research in order to insure that the risk assessment process is based on adequate environmental data and scientific understanding, in order to provide the most cost-effective use of environmental protection resources.

(b) ENVIRONMENTAL MONITORING AND ASSESSMENT PROGRAM.—The Administrator shall conduct a research program to—

(1) design and evaluate methods and networks to collect monitoring data on the current and changing condition of the environment (including, but not limited to, human health, ecological resources, materials, and exposure to environmental stressors relevant to making decisions at the Federal level about alternative risk assessment and risk reduction options;

(2) implement such monitoring programs, in cooperation with relevant programs in other Federal agencies;

(3) manage data from such monitoring programs in forms and formats readily accessible to the scientific community and the public; and

(4) provide annual statistical reports and periodic interpretive reports of the results of such monitoring programs to Congress and the public.

(c) ENVIRONMENTAL RISK ASSESSMENT RESEARCH PROGRAM.—The Administrator will conduct a long-term core program to establish a firm scientific basis for initial and subsequent risk assessment guidelines, including methods for—

(1) assessing exposure of humans, ecological resources, and materials to stressors, including methods for determining the environmentally effective level of the stressor that actually initiates the effect;

(2) accurately predicting the effects of exposure to stressors on human health, ecological resources, and materials;

(3) quantifying statistical uncertainty in exposure and stress-response estimates; and

(4) quantifying the social and economic values of effects on human health, welfare, and ecological resources.

(d) LONG-TERM RESEARCH PLANNING.—At least one-half of the research conducted under this Act shall be under contracts or assistance agreements with universities and other nonprofit or not-for-profit organizations awarded under full and open competition, under which full funding for at least 3 years of the contract will be obligated at the beginning of the contract or agreement.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated the sum of $80,000,000 for fiscal year 1992, $130,000,000 for fiscal year 1993, and $200,000,000 for each of the fiscal years 1994 through 1998, to carry out the provisions of this section.

SEC. 7. INTERAGENCY PANEL ON RISK ASSESSMENT AND REDUCTION.

(a) ESTABLISHMENT.—There is established an Inter-agency Panel on Risk Assessment and Reduction (hereafter in this Act referred to as "Interagency Panel") for the purpose of coordinating Federal research, data gathering, and implementation of environmental risk assessment and risk reduction activities.

(b) MEMBERSHIP.—The Interagency Panel shall consist of one representative each from—

(1) the Environmental Protection Agency;

(2) the Department of the Interior;

(3) the Department of Health and Human Services;

(4) the Department of Energy;

(5) the Department of Commerce;

(6) the Department of Agriculture;

(7) the Corps of Engineers;

(8) the Council on Environmental Quality; and

(9) any other Federal department or agency that the President, or the Chairman of the Interagency Committee, considers appropriate.

Each such representative shall be designated by the head of the entity named.

(c) CHAIRMAN.—The member of the Interagency Panel representing the Environmental Protection Agency shall serve as the Chairperson of the Interagency Panel.

SEC. 8. REPORTS TO CONGRESS.

(a) ASSESSMENT OF ENVIRONMENTAL RISK REDUCTION OPTIONS.—Within 24 months following the date of enactment of this Act, the Administrator shall prepare and submit a report to the Congress which identifies—

(1) a prioritized list of the human health, welfare, and ecological resource risks considered by the Committee on Relative Risks;

(2) public awareness of the likelihood, seriousness, magnitude, and irreversibility of each risk;

(3) alternative options for reducing risks and corresponding estimated costs and benefits to society, including costs to Federal agencies and the private sector, and any adverse effects that cannot yet be quantified in monetary terms;

(4) the time required for reducing risks through each option;

(5) evaluation of the uncertainty associated with relevant aspects of the assessment process; and

(6) research or data collection that would significantly reduce the uncertainty in any assessment within 24 months of the submission of the report to Congress.

(b) INTENT OF CONGRESS.—It is the intent of Congress that the information contained in the annual report be used to assist in directing the activities of the Agency so as to result in reducing the most serious and probable risks to the greatest number of people and sustainable ecological resources. The Administrator shall carry out this Act in a reasonable and prudent manner so as to insure the protection of public health and the environment, and in a manner open to public inspection, but he shall not be delayed in carrying out his responsibilities under other environmental laws by his responsibilities under this Act.

(c) ONGOING ASSESSMENT.—The Administrator shall revise and update the report submitted under this section at least every 24 months to reflect new data or scientific understanding.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Except as otherwise provided in sections 4 and 6, nothing in this Act shall constitute a new authorization for the appropriation of funds.•

By Mr. DODD (for himself and Mr. LAUTENBERG):

S. 2133. A bill to provide for the economic conversion and diversification of industries in the defense industrial base of the United States that are adversely affected by significant reductions in spending; to the Committee on Banking, Housing, and Urban Affairs.

DEFENSE INDUSTRIAL STABILIZATION AND COMMUNITY TRANSITION ACT OF 1991

• Mr. DODD. Mr. President, I rise today to introduce the Defense Industrial Stabilization and Community Transition Act of 1991, a bill to provide economic adjustment assistance to industries, communities and dislocated workers impacted by cuts in defense spending.

There can be no doubt, Mr. President, that the past few years have brought sweeping changes across the globe. In the Soviet Union, communism has collapsed. In Eastern Europe, democracy and free market ideology have taken root. In Angola, Cambodia, and other tortured regions around the world, the end of the cold war has given people an opportunity to lift themselves from war and build for themselves a better life.

We would be fooling ourselves, however, if we believed that there are no

more threats left in the world. The instability in the Soviet Republics and the Civil war in Yugoslavia are proof of that. We still need an active, vigilant defense, equipped with the best available technologies and armed with the best available weaponry. And we must view any prospective cuts in our defense budget with a tempered, cautious eye.

But the fact is the cascade of world events nearly assures that cuts will eventually come to the defense budget. Our task is to see to it that those cuts are careful, measured, and responsible. Most importantly, however, it is our responsibility to ensure that those cuts are carried out with the least possible disruption to our economy.

The bill I am introducing today is a first step, Mr. President, in meeting that important mandate.

Mr. President, during my 17 years in the U.S. Congress I have spoken often about the need for communities and industries to diversify their production. That is a conviction I held in 1978, when I sponsored defense diversification legislation in the House of Representatives. It is a conviction I held when, over a decade ago, I hosted a conference in Connecticut on the defense diversification issue.

And it is a conviction I hold even more firmly today.

The legislation I am introducing today will not cure the problem of dislocated workers. It is not a panacea for the plague of closed plants or dormant production lines. But it is a vital first step to give defense-dependent communities and industries the resources to help themselves. And it is an attempt to provide defense workers with the same sense of stability and security they have helped create for all Americans.

As 1991 draws to a close, whom do we thank for our victory in the cold war? Certainly we must honor the brave Americans who risked their lives in combat for the price of freedom. And we owe a debt of gratitude to the U.S. ground forces and air patrols that for decades have kept a vigilant watch in Europe and the Pacific.

But as we take the roll of honor in the struggle against communism, as we sum up the achievements of the glorious and the proud, as we hand out the placards and the awards and the trophies, there is one aspect of the battle we must never forget.

It is a capable sector of our economy known as the defense industry, Mr. President, that makes it all possible.

Mr. President, I have long believed that the workers in our defense industry are the veterans of the cold war. Whether in Groton, CT, or St. Louis, MI, or Fort Worth, TX—indeed in communities all across the Nation—the defense industry has given our fighting men and women the best armaments that money can buy. This vast army of workers and engineers answered the call of patriotism and rose to their Nation's defense in the way they knew how—with machine tools and carbon welds, drafting boards and blueprints.

As veterans of the cold war, Mr. President, these defense workers deserve more than our debt of gratitude. We owe them our pledge that their jobs and their livelihoods will not be jeopardized by the very peace they helped bring about.

In communities across the Nation, a sudden drop in Federal defense expenditures threatens to slam shut the doors of factories, dry up local resources, and cast workers and managers alike onto the street. The very people who devoted their souls to the preservation of this Nation's defense may face the horrible prospect of being forced from their jobs, victims of their own success.

But Mr. President, the potential threat goes deeper than that. Let me cite one example within my State. Just yesterday, I was approached by a representative of Colt Manufacturing, the firearms producer that employs nearly 1,000 people in Hartford. I was told that due to declining expenditures, the company may be forced to shut down its entire production line, both commercial and military, within two months.

The loss, of 1,000 employees, in an economy such as Connecticut's, would be staggering. But even more disturbing is the fact that the Nation's leading manufacturer of firearms—and one that has been in my State for over 100 years—would be lost forever. The skill and experience developed over more than a century would simply evaporate, never to be regained.

In the global economic competition of the 21st century, the loss of a manufacturer with such expertise would be terribly damaging. And in a world that still remains dangerous—despite the dramatic transformations of the past few years—our ability to retool our industries for defense production must be preserved.

We must not repeat the experience after World War II, when we let our defense industrial base collapse and found ourselves unprepared for the outbreak of the Korean war. We must remain vigilant and prepared to meet any contingency. We must apply the same expertise and ingenuity to the transition of the defense economy as we did to its creation, or we will lose forever these technologies, this industrial base, and important jobs.

These are the problems we face, Mr. President, as we prepare to adapt the economy of the United States. It is a daunting challenge—but it must be met head on. The restructuring of budget priorities provides us with a unique opportunity to assess our technological strengths, and a challenge to solidify our gains.

Sadly, we have not met this challenge to date.

President Bush maintains that economic adjustment is not necessary. He says the reduction in the deficit caused by lower defense spending will stimulate the economy to create new opportunities. But the President misses the trees for the forest. I fail to see how New London County—which received over $9,000 per capita in defense dollars last year and by one estimate stands to lose over 21,000 jobs by 1996 due to defense cuts—will gain from a reduction in the deficit.

It is for this reason, Mr. President, that I have chosen to introduce this bill. I am pleased to be joined by Senator LIEBERMAN in this effort. And I am pleased to join him on the bill he has introduced, the Industrial Diversification and Economic Adjustment Act of 1991.

In drafting the bill I am putting forward today, I followed a few simple guidelines.

First, any effort at diversification must be coordinated. This bill calls for the establishment of a Presidential Council on Economic Adjustment. Among the duties of this council will be the planning and evaluation of Federal adjustment initiatives, the carrying out of studies on technology transfer and marketing potential for newly developing industries, and the maintaining of a clearinghouse for Federal and State initiatives.

But the most important aspect of this council, Mr. President, is that it serve as a liaison—a vital link between companies and communities that are endangered by defense cuts, and the Federal programs that can help them adjust to those cuts. There are a host of programs already available, whether oriented toward technology transfer, export assistance, economic development, job training, or small business. The Presidential Council on Economic Adjustment shall be responsible for ensuring those resources are amply used.

Second, companies and communities must have the flexibility to utilize those measures appropriate for them. The bill rejects the use of mandates or other requirements that industries or communities must meet. Rather, this legislation provides a panorama of options from which those in need can choose.

Defense companies may receive Federal matching grants for the establishment of alternative use committees to explore other ways to utilize their production lines. They will become eligible under the Defense Production Act for loans, loan guarantees, and joint Federal-private initiatives aimed at diversification. And to help smooth out the transition, defense companies shall become eligible for State Department-backed loan guarantees for the export of military goods to NATO countries, plus Japan, Israel, Australia, or New Zealand.

The goal of these provisions is simple: to encourage defense contractors

to keep their lines open, commercialize their products and keep skilled labor in place. When companies stay open, job security is maintained. It is as simple as that.

But we do not focus entirely on companies in this bill. Flexibility must apply to the individual and the community, as well. That is why we provide additional funding for assistance to paid off defense workers through the Job Training Partnership Act. And it is why we allow defense-dependent communities to apply for additional assistance under Title IX of the Public Works and Development Act. There is truly something for everyone in this bill.

Third, the bill adheres to the fundamental premise regarding an ounce of prevention. It requires the Presidential Council to identify on an annual basis not only those communities that are currently at risk due to planned defense cuts, but those communities that are potentially at risk in the future due to a heavy concentration of defense-dependent industries. Such communities would also be eligible for assistance under this bill.

Finally, the bill recognizes that a program of this scope is not without its costs. To pay for its provisions, it sets aside 10 percent of the approximate savings from reductions in the defense budget. This provides an ample and responsible funding base.

Mr. President, as I have said before, I certainly do not regard this bill as a panacea. It is not the final say on this matter. But with it we are laying down a marker—stating firmly and unequivocably that the issue of defense economic adjustment deserves attention and debate. We owe it to our defense industry. We owe it to our defense industry workers. And ultimately, we owe it to ourselves.

If we are to take some responsibility for our future capabilities in production and engineering, if we are to start planning today for the economy of tomorrow, we must reinvigorate the debate on this fundamentally important issue. This is not about rewarding the defense industry, or subsidizing the defense worker. It is not preserving the basic technological developments that brought us into this decade—and seeking the technologies to catapult us into the next one.

I look forward to working with Senator LIEBERMAN and the leadership of the Congress on this important legislation.●

By Mr. NUNN (for himself and Mr. FOWLER):

S. 2134. A bill to provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic games and the programs of the United States Olympic Committee; to the Committee on Banking, Housing, and Urban Affairs.

1996 ATLANTA CENTENNIAL OLYMPIC GAMES COMMEMORATIVE COIN ACT

● Mr. NUNN. Mr. President, I rise today to join my colleague from Georgia, Senator WYCHE FOWLER, in introducing legislation to honor and assist the centennial Olympic games being held in Atlanta in the summer of 1996 by authorizing a special commemorative coin. This is an exact counterpart to a House bill already introduced by Representative DOUG BARNARD, who is the Georgia congressional delegation's lead member on this issue.

This legislation follows the precedent established when the United States last hosted the Olympics, in Los Angeles in 1984. As in 1984, we are establishing a 2-year commemorative coin program to culminate in the Olympic year, with proceeds divided between the Olympic Organizing Committee and the U.S. Olympic Committee.

The 1984 Olympic coin helped make the Los Angeles Olympics a financial success, raising $73 million. The Atlanta Committee for the Olympic games hopes to raise a total of $100 million with its commemorative coin, a small but crucial element in its projected budget of $1.2 billion.

Aside from its financial aspects, this commemorative coin program provides both American citizens and international supporters of the Olympic movement a means of participating in the centennial games.

From the moment last autumn in Tokyo when Atlanta concluded its upset victory in the bid for the 1996 games, there has been an exceptional air of excitement about this event. It has galvanized not just Atlanta but the entire southeastern region. As the first summer games ever held on the east coast of the United States, the 1996 games will be the most widely broadcast in history, and one of the most heavily attended, with more than 150,000 people per day expected.

Mr. President, I urge my Senate colleagues to express their support for America's centennial games by supporting establishment of this commemorative coin program.●

By Mr. KENNEDY:

S. 2135. A bill to amend the Federal Food, Drug, and Cosmetic Act to enhance the enforcement authority of the Food and Drug Administration, and for other purposes; to the Committee on Labor and Human Resources.

FOOD, DRUG, COSMETIC, AND DEVICE ENFORCEMENT AUTHORITIES ACT

Mr. KENNEDY. Mr. President, today I am pleased to introduce the Food, Drug, Cosmetic and Device Enforcement Authorities Act of 1991. The legislation will finally provide the Food and Drug Administration [FDA] with the same enforcement tools granted to other regulatory agencies, and will enable the FDA to more effectively carry out its critical responsibilities under the Food, Drug and Cosmetic Act.

The FDA regulates products which account for 25 cents of every dollar spent in this country—a statistic about the agency that is cited often. However, more important than the sheer volume of products subject to FDA oversight is the degree to which these regulated products affect the lives of every American in vital ways each day. Ineffective oversight by the FDA exposes the public to substantial risks from unsafe or defective products.

The stark reality is that the FDA simply does not have the necessary means to enforce the law. The enforcement provisions in the Food, Drug and Cosmetic Act are more than 50 years old. The enforcement authorities were written prior to the first therapeutic use of Penicillin, and have been rendered obsolete by the development of products unimagined half a century ago. The FDA has a unique mission as both a scientific agency, and an agency charged with consumer protection. The FDA cannot fulfill its mandates without enforcement authorities which give it the ability to obtain essential information concerning regulated products in an efficient and timely manner.

Earlier this year the Edwards Committee, a blue ribbon panel of FDA experts, criticized what it called the FDA's mixed bag of enforcement tools and recommended that "the Agency should be armed with the same tools for all products that it regulates." Last year, passage of the Safe Medical Devices Act gave the Agency the ability to impose administrative civil penalties for medical device violations. However, for violations relating to foods, drugs or cosmetics, FDA must still rely solely on the harsh sanction of criminal penalties, which is a severe limitation of FDA's ability to institute appropriate sanctions. Last year Congress also provided FDA with the authority to recall medical devices which posed unacceptable risks, but FDA cannot institute mandatory recalls of foods, drugs or cosmetics. The FDA has record inspection authority to inspect the records of drug and medical device manufacturers, but that authority does not extend to food or cosmetic facilities.

In contrast to the FDA, the enforcement authorities of other U.S. regulatory agencies have been improved over time. For example, the FDA does not have authority to subpoena documents and witnesses in connection with investigations, unlike the Environmental Protection Agency, the Federal Trade Commission, and the Consumer Product Safety Commission. There is no reason for the FDA, with its enormous responsibilities, to have enforcement authorities inferior to those of other regulatory agencies.

While there is an urgent need to increase FDA's enforcement authorities, the regulated industries have raised concerns about the scope of these au-

thorities. As a result, these new enforcement powers are carefully circumscribed in this bill.

The legislation would grant the following authorities:

The Federal courts would be able to recall products which were in violation of the Food, Drug and Cosmetic Act. This provision reflects the standard included in an original health and human services bill on enforcement authorities;

The administrative recall provision employs the same standard for food, drug, or cosmetic recalls as current law for medical devices. Administrative recall could be instituted if there was a reasonable probability that a food, drug, or cosmetic will cause serious adverse health consequences or death;

The seizure authority of the agency would be refined, and the agency would be given the authority to embargo products while a seizure order is being obtained. Currently, there is no Federal embargo authority for food, drugs, or cosmetics, and the FDA must rely on state embargo authority; and

The agency would be granted subpoena authority in connection with an administrative investigation. Subpoenas could only be issued by the Commissioner, the Chief Counsel of FDA, or an administrative law judge in connection with a hearing.

The bill identifies a variety of special protections for formulas and other trade secret information, certain types of financial information and patients names in medical or research files. The legislation also directs the Secretary, to the extent appropriate, to follow the requirements of the Federal Trade Commission Act when issuing guidelines on the use of subpoenas, and on the protection of confidential information obtained by subpoena. The Federal Trade Commission statute has proven to be a model in protecting the confidentiality of commercial information obtained in investigations, and it should serve as a helpful example to the Commisssioner.

The bill would provide the agency with administrative civil money penalty authority for violations involving all the products that it regulates. This is another area where the most recent revision of the medical device amendments provided such administrative civil money penalties, but such authority must be agency wide to permit maximum flexiblity.

The inspection authority of the agency would be strengthened, making food facilities subject to the kinds of inspections to which other drug and device facilities are already subject. The legislation imposes explicit limitations on this general inspection authority.

The agency would be authorized to order the destruction of imported products determined to be hazardous to health, preventing the port shopping which currently allows many hazardous products to successfully evade current inspection efforts.

The bill would define all products affecting interstate commerce as subject to the new enforcement laws, making the FDA enforcement activities more efficient and effective. Under current law, FDA must waste valuable resources preparing to prove that products move in interstate commerce.

The FDA cannot maintain its credibility as an enforcement agency without enforcement tools that allow it to regulate aggressively and consistently. We cannot continue to handcuff the agency responsible for assuring the safety and efficacy of essential products with antiquated enforcement laws. I look forward to an early hearing on this legislation next year.

I also look forward to pursuing other important FDA reforms. As the Edwards Committee report made clear, the FDA needs broad reform in several areas, including the need to assure the independence of the FDA commissioner, the need to remedy the crippling short-fall in FDA resources, and the need to improve utilization of existing facilities and personnel. I will be introducing legislation next year which will address these issues. While improved enforcement is crucial to FDA's mission, the agency cannot meet the unprecedented challenges it faces without fundamental change in many areas.

By Mr. CONRAD:

S. 2136. A bill to authorize construction of the northwest area water supply/Fort Berthold intergrated water supply project, hereinafter referred to as the "Na chiin Huun—Dakota Project," and for other purposes; to the Committee on Energy and Natural Resources.

NA CHIIN HUNN—DAKOTA PROJECT ACT OF 1991

Mr. CONRAD. Mr. President, I rise today to introduce legislation to provide much needed water supplies to the Fort Berthold Reservation and northwestern North Dakota.

This legislation was developed after a number of years of study. The first study of how to meet the water needs of northwestern North Dakota was conducted in 1988. Dramatic water quality and supply needs were identified in nearly all of the region. The three affiliated tribes were also studying ways to meet their own significant water quality and supply needs.

The State and the three affiliated tribes decided to combine their efforts into one overall integrated water supply system serving regional demands. This bill implements their proposals.

This legislation was developed through a consultative process within the State of North Dakota. I understand it will be amended as we move through this process, and I look forward to receiving comments on this legislation and hearings on this subject.

ADDITIONAL COSPONSORS

S. 359

At the request of Mr. BOREN, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 359, a bill to amend the Internal Revenue Code of 1986 to provide that charitable contributions of appreciated property will not be treated as an item of tax preference.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 493

At the request of Mr. KENNEDY, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 493, a bill to amend the Public Health Service Act to improve the health of pregnant women, infants and children through the provision of comprehensive primary and preventive care, and for other purposes.

S. 747

At the request of Mr. PRYOR, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 747, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 891

At the request of Mr. MACK, the names of the Senator from Colorado [Mr. WIRTH] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 891, a bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for qualified cancer screening tests.

S. 1257

At the request of Mr. BOREN, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1261

At the request of Mr. DOLE, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1521

At the request of Mr. MCCONNELL, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of 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.

S. 1557

At the request of Mr. LAUTENBERG, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 1557, a bill to improve the implementation and enforcement of the Federal cleanup program.

S. 1597

At the request of Mr. HATFIELD, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1597, a bill to amend the Public Health Service Act to provide grants to entities in rural areas that design and implement innovative approaches to improve the availability and quality of health care in such rural areas, and for other purposes.

S. 1627

At the request of Mr. FORD, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1627, a bill to amend section 615 of title 38, United States Code, to require the Secretary of Veterans Affairs to permit persons who receive care at medical facilities of the Department of Veterans Affairs to have access to and to consume tobacco products.

S. 1647

At the request of Mr. CHAFEE, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1647, a bill to amend the Internal Revenue Code of 1986 to provide that the deduction for State and local income and franchise taxes shall not be allocated to foreign source income.

S. 1698

At the request of Mr. SARBANES, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1698, a bill to establish a National Fallen Firefighters Foundation.

S. 1774

At the request of Mr. BRYAN, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor 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. 1786

At the request of Mr. BAUCUS, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1786, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment.

S. 1788

At the request of Mr. WIRTH, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1788, a bill to establish the National Air and Space Museum Expansion Site Advisory Panel for the purpose of developing a national competition for the evaluation of possible expansion sites for the National Air and Space Museum, and to authorize the Board of Regents of the Smithsonian Institution to select, plan, and design such site.

S. 1877

At the request of Mr. BOND, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1877, a bill to require the use of child restraint systems on commercial aircraft.

S. 1886

At the request of Mr. MCCONNELL, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor 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. 1931

At the request of Mr. STEVENS, the names of the Senator from Washington [Mr. GORTON] and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of S. 1931, a bill to authorize the Air Force Association to establish a memorial in the District of Columbia or its environs.

S. 1950

At the request of Mr. DANFORTH, the name of the Senator from Hawaii [Mr. AKAKA] 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. 2015

At the request of Mr. DOLE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of 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.

S. 2065

At the request of Mr. DIXON, the name of the Senator from Kansas [Mrs. KASSEBAUM] was withdrawn as a cosponsor of S. 2065, a bill to federalize the crime of child molestation for repeat offenders.

S. 2089

At the request of Mr. MCCAIN, his name was added as a cosponsor of S. 2089, a bill to repeal exemptions from civil rights and labor laws for Members of Congress.

S. 2091

At the request of Mr. DECONCINI, the names of the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of S. 2091, a bill to assure the protection of Haitians in the United States or in United States custody pending the resumption of democratic rule in Haiti.

S. 2117

At the request of Mr. SASSER, the names of the Senator from Georgia [Mr. FOWLER], the Senator from Nevada [Mr. BRYAN], and the Senator from Nevada [Mr. REID] were added as cosponsors of S. 2117, a bill to ensure proper service to the public by the Social Security Administration by providing for proper budgetary treatment of Social Security administrative expenses.

SENATE JOINT RESOLUTION 113

At the request of Mr. LAUTENBERG, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 113, a joint resolution designating the oak as the national arboreal emblem.

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. DODD, the names of the Senator from Washington [Mr. GORTON], the Senator from Tennessee [Mr. SASSER], the Senator from Mississippi [Mr. COCHRAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Virginia [Mr. WARNER], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of Senate Concurrent Resolution 43, a concurrent resolution concerning the emancipation of the Baha'i community of Iran.

SENATE CONCURRENT RESOLUTION 57

At the request of Mr. BOREN, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Concurrent Resolution 57, a concurrent resolution to establish a Joint Committee on the Organization of Congress.

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. DECONCINI, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from Washington [Mr. ADAMS] 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.

SENATE CONCURRENT RESOLUTION 75

At the request of Mr. REID, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Concurrent Resolution 75, a concurrent resolution expressing the sense of the Congress that the President should award the Presidential Unit Citation to the crew of the U.S.S. Nevada for their heroism and gallantry during the attack on Pearl Harbor on December 7, 1941.

SENATE RESOLUTION 230

At the request of Mr. D'AMATO, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Resolution 230, a resolution in support of Machine Tools VRA.

SENATE CONCURRENT RESOLUTION 83—CORRECTING THE ENROLLMENT OF S. 543

Mr. GARN submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 83

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill, S. 543, the Secretary of the Senate shall make the following correction:

At the appropriate place, insert:

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 and the deposits of Community National Bank and Trust Company of New York that—

(1) were deposited by a charitable organization as such term is defined by New York State law, or by a religious organization; and

(2) were deposits of such bank on the date of its closure by the Office of the Comptroller of the Currency,

shall be fully insured notwithstanding any other provisions of the Federal Deposit Insurance Act.

SENATE CONCURRENT RESOLUTION 84—CORRECTING THE ENROLLMENT OF H.R. 3435

Mr. RIEGLE submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 84

Resolved by the Senate (the House of Representatives concurring), The Clerk of the House is directed to make the following changes in the enrollment of H.R. 3435:

Strike Section 618.

SENATE CONCURRENT RESOLUTION NO. 85—CORRECTING A TECHNICAL ERROR IN THE ENROLLMENT OF THE BILL (H.R. 3531)

Mr. FORD (for Mr. DECONCINI) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 85

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 3531), an Act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1992, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 8 of the bill insert a semicolon immediately after the first quotation marks.

(2) In section 5(d)(2)(C) insert quotation marks immediately before "CHAPTER 4—PATENT FEES;".

SENATE CONCURRENT RESOLUTION NO. 86—CORRECTING THE ENROLLMENT OF H.R. 2950

Mr. CHAFEE (for Mr. DOLE) submits a concurrent resolution; which was considered and agreed to:

S. CON. RES. 86

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House is directed to make the following changes in the enrollment of H.R. 2950, section 1014(e)(2).

At page 73, line 2, strike "91" and insert "81";

At page 73, line 4, strike "91" and insert "81".

SENATE RESOLUTION 238—RELATIVE TO SENATE PERQUISITES

Mr. SPECTER submitted the following resolution; which was referred to the Commitee on Rules and Administration:

S. RES. 238

Whereas, there is an important open issue on the propriety of perquisites enjoyed by members of the Senate, including but not limited to medical services, dental services, gymnasium facilities, cut rates for barber/beauty shop services, limousine service for the leadership, use of artwork, and airport parking;

Whereas, an objective evaluation should be made as to appropriate payment for such services for purposes of computing overall compensation as well as taxable income: Now, therefore, be it

Resolved, That the Committee on Rules and Administration shall report to the full Senate on or before June 30, 1992 on a plan to deal with Senators' perquisites with a view toward having Members of the Senate pay full market value for such perquisites or having such value of such perquisites included in the overall compensation of each Member of the Senate.

Mr. SPECTER. Mr. President, recent events in the U.S. Congress have raised questions as to the propriety of certain perquisites and privileges available to Members of Congress. Such events in this Senator's view, are facilitating a loss of public confidence in Congress. Accordingly, I believe there is an urgent need for this body to review its practices and procedures in order to bolster public confidence in Congress.

To this end Mr. President, today I am introducing a resolution calling on the Senate Rules Committee to perform an objective evaluation of perquisites for Members of the Senate and to report back to the full Senate by June 30, 1992, with a plan to deal with those perquisites that are not required for performing the constitutional duties of a U.S. Senator. In particular, I believe that those perks that are required for performing our duties should be paid for by Senators and not subsidized by American taxpayers.

Mr. President, as Senators we receive a number of perquisites that are incidental and integral to the performance of our official duties. These perks include among others, the franking privilege and our office allowances. However, there are a number of other perquisites such as medical and dental services, gymnasium privileges, airport parking, and the use of artwork from the National Gallery of Art, for which we do not pay and which are not integral to the performance of such duties.

In view of these latter perquisites, my resolution calls on the Rules Committee to evaluate all of the perquisites which members of this body receive to determine which are appropriate payment or otherwise be included in such members' overall compensation.

SENATE RESOLUTION NO. 239—RELATING TO THE ALBERT EINSTEIN SENATE FELLOWSHIP PROGRAM

Mr. CHAFEE (for Mr. HATFIELD) submitted the following resolution; which was considered and agreed to:

S. RES. 239

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be referred to as the "Albert Einstein Senate Fellowship Program Resolution".

SEC. 2. REAUTHORIZATION.

The authority provided in Senate Resolution 173 of the One Hundred-second Congress (agree to on August 2, 1991), as amended by Senate Resolution 208 of the One Hundred-second Congress (agreed to on October 25, 1991), and further amended by Senate Resolution 228 of the One Hundred-second Congress (agreed to on November 21, 1991), is hereby reauthorized in accord with the provisions of this resolution.

SEC. 3. FELLOWSHIP PROGRAM.

(a) IN GENERAL.—The President pro tempore of the Senate is authorized to enter into an agreement with the Triangle Coalition for Science and Technology Education (hereafter in this resolution referred to as "Coalition") to establish an Albert Einstein Senate Fellowship Program (hereafter in this resolution referred to as the "fellowship program"), which, beginning with the fiscal year 1991, provides for two fellowships in the Senate for each fiscal year.

(b) RESPONSIBILITIES.—The President pro tempore of the Senate may enter into the agreement described in subsection (a), and authorize the expenditure of funds pursuant to section 4(e), only if the Coalition—

(1) undertakes the application responsibilities referred to in section 4(a);

(2) participates in the evaluation referred to in section 5; and

(3) provides the funding for administration and evaluation costs referred to in section 6(b), and partial compensation referred to in section 4(e)(1)(A).

SEC. 4. SELECTION PROCESS.

(a) APPLICATION RESPONSIBILITIES.—The Coalition shall—

(1) develop and administer an application process in accord with subsection (d);

(2) publicize the fellowship program; and

(3) conduct an initial screening of applicants for the fellowship program.

(b) SELECTION.—Each fiscal year the President pro tempore of the Senate, upon the recommendation of the Majority Leader, in consultation with the Minority Leader, shall select the two recipients of the Senate fellowships from among the applicants processed under subsection (a).

(c) PLACEMENT OF FELLOWSHIPS.—

(1) The President pro tempore of the Senate, upon the recommendation of the Majority Leader, in consultation with the Minority Leader, and the chairmen and ranking minority party members of the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation of the Senate, may place one

fellowship recipient on the staff of the Committee on Labor and Human Resources, and may place one fellowship recipient on the staff of the Committee on Commerce, Science, and Transportation.

(2) Notwithstanding paragraph (1), either or both fellowship recipients may instead be placed on the personal staff of a member of the Senate.

(d) ELIGIBLE RECIPIENTS.—Applicants screened under subsection (a) shall be from among a pool of nationally recognized outstanding secondary school science and mathematics teachers. The pool shall include teachers who have received Presidential Awards for Excellence in Science and Mathematics Teaching, as established by section 117(a) of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1881b), or other similar recognition of skills, experience, and ability as science or mathematics teachers.

(e) COMPENSATION.—

(1) Each recipient of a Senate fellowship shall be compensated—

(A) in part by the Coalition;

(B) in part from funds made available under section 6(a).

(2) The President pro tempore of the Senate shall fix the compensation of each recipient authorized in paragraph (1)(B) at not to exceed one-half of the funds authorized to be available for each respective fiscal year under section 6(a).

(f) LENGTH OF TERM.—Each fellowship recipient shall serve for a period of ten months.

SEC. 5. EVALUATION.

The Chairman of each committee or the member of the Senate in whose office a fellowship recipient is placed, and the Executive Director of the Coalition shall submit to the President pro tempore of the Senate an annual report evaluating the fellowship program, and shall make recommendations concerning the continuation of the program.

SEC. 6. FUNDING.

(a) FELLOWSHIPS.—For fiscal years 1991, 1992, and 1993, the funds authorized to compensate Senate fellowship recipients under section 4(e) shall be paid from the contingent fund of the Senate, but not to exceed a total of $40,000 in fiscal year 1991 with such funds to remain available through September 30, 1992, $42,500 in fiscal year 1992, and $45,000 in fiscal year 1993 for the Senate fellowships.

(b) ADMINISTRATION AND EVALUATION.—The Coalition shall provide the funds necessary for the administration of the fellowship program, and for evaluations conducted pursuant to section 5.

SEC. 7. SUPERSEDING PREVIOUS AUTHORITY.

This resolution supersedes the resolutions referred to in section 2.

SEC. 8. TERMINATION DATE.

The provisions of this resolution shall terminate September 30, 1993.

SENATE RESOLUTION NO. 240—RELATING TO THE UNITED STATES CAPITOL PRESERVATION COMMISSION

Mr. FORD (for Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 240

Resolved, That paragraph 1 of Rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol be temporarily suspended for the sole and specific purpose of permitting the United States Capitol Preservation Commission and its designated agents to conduct activities in accordance with the purposes of the Commission on such dates and times, and in such manner as determined by the Senate Cochair of the Commission or his designee.

SEC. 2. The Sergeant at Arms of the Senate is authorized and directed to make the necessary arrangements to facilitate activities authorized by this resolution.

SENATE RESOLUTION NO. 241—RELATING TO THE UNITED STATES VERSUS PETER MACDONALD CASE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 241

Whereas, in the case of *United States* v. *Peter MacDonald, Jr., et al.*, No. CR-91-087-PCT-EHC, pending in the United States District Court for the District of Arizona, counsel for defendant Peter MacDonald, Jr., has requested the testimony of Kenneth M. Ballen, a former employee of the Senate on the Staff of the Special Committee on Investigations of the Select Committee on Indian Affairs;

Whereas, pursuant to section 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 employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States 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 processs, be taken from such control or possession but by permission of the Senate;

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 Kenneth M. Ballen, and any other employee or former employee of the Senate from whom testimony may be necessary, are authorized to testify in *United States* v. *Peter MacDonald, Jr., et al.*, except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is authorized to represent Kenneth M. Ballen, and any other employee or former employee of the Senate from whom testimony may be necessary, in connection with their testimony in *United States* v. *Peter MacDonald, Jr., et al.*

AMENDMENTS SUBMITTED

RESOLUTION TRUST CORPORATION REFINANCING ACT

DOMENICI (AND OTHERS) AMENDMENT NO. 1450

(Ordered to lie on the table)

Mr. DOMENICI (for himself, Mr. RUDMAN, Mr. SYMMS, Mr. CHAFEE, Mr. MACK, Mr. DANFORTH, and Mr. MCCAIN) submitted an amendment intended to be proposed by them to the bill (H.R. 3435) to provide funding for the resolution of failed savings associations and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes; as follows:

At the appropriate place in the bill insert the following:

SEC. . CREDIT AVAILABILITY.

Section 5(t)(5) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(5)) is amended by adding at the end the following new paragraph:

"(F) EXCEPTIONS GRANTED BY DIRECTOR.—

"(i) IN GENERAL.—The Director may grant such limited and temporary exceptions from subparagraphs (A) and (D) as the Director deems necessary and appropriate, if the Director determines that—

"(I) extraordinary circumstances exist or that economic conditions at the national, regional, or local level are such that an insufficient opportunity exists for the association to divest a subsidiary engaged in activities not permissible for a national bank or any investment in or extension of credit to such subsidiary; and

"(II) the conditions set forth in paragraph (7)(C)(i) of this subsection are satisfied.

"(ii) LIMITATION.—An exception under this subparagraph applies only to the amount of the savings association's investments in or extensions or credit to a subsidiary as of April 12, 1989, and the amounts that have been or will be expended to complete projects or investments that were initiated by such subsidiary prior to the date of enactment of this subparagraph. In granting an exception pursuant to this subparagraph, the Director shall require the same percentage deduction from capital for amounts invested and credit extended as of April 12, 1989, and for amounts invested and credit extended thereafter.

"(iii) DURATION.—No exception under this subparagraph shall be effective after July 1, 1999.

"(iv) AMOUNT.—No exception shall reduce the percentage deduction from capital to a percentage less than that required as of the date of enactment of this subsection for investments and extensions of credit made prior to April 12, 1989.".

RECLAMATION STATES EMERGENCY DROUGHT RELIEF

JOHNSTON AMENDMENT NO. 1451

Mr. MITCHELL (for Mr. JOHNSTON] proposed an amendment to the bill (H.R. 355) to provide emergency drought relief to the reclamation States, and for other purposes, as follows:

Delete all after the enacting clause and substitute the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reclamation States Emergency Drought Relief Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Federal Reclamation laws" means the Act of June 17, 1902 (32 Stat. 388)

and Acts supplementary thereto and amendatory thereof.

(3) The term "Federal Reclamation project" means any project constructed or funded under Federal Reclamation law. Such term includes projects having approved loans under the Small Reclamation Projects Act of 1956 (70 Stat. 1044).

TITLE I—DROUGHT PROGRAM

SEC. 101. ASSISTANCE DURING DROUGHT; WATER PURCHASES.

(a) CONSTRUCTION, MANAGEMENT, AND CONSERVATION.—Consistent with existing contractual arrangements and applicable State and applicable Federal law, and without further authorization, the Secretary is authorized to undertake construction, management, and conservation activities that will minimize, or can be expected to have an effect in minimizing, losses and damages resulting from drought conditions. Any construction activities undertaken pursuant to the authority of this subsection shall be limited to temporary facilities designed to minimize losses and damages from drought conditions, except that wells drilled to minimize losses and damages from drought conditions may be permanent facilities.

(b) ASSISTANCE TO WILLING BUYERS AND SELLERS.—In order to minimize losses and damages resulting from drought conditions, the Secretary may provide non-financial assistance to willing buyers in their purchase of available water supplies from willing sellers.

(c) WATER PURCHASES BY BUREAU.—In order to minimize losses and damages resulting from drought conditions, the Secretary may purchase water from willing sellers, including, but not limited to, water made available by Federal Reclamation project contractors through conservation or other means with respect to which the seller has reduced the consumption of water. Except with respect to water stored, conveyed or delivered to Federal and State wildlife habitat, the Secretary shall deliver such water pursuant to temporary contracts under section 102: *Provided*, That any such contract shall require recovery of any costs, including interest if applicable, incurred by the Secretary in acquiring such water.

(d) WATER BANKS.—In order to respond to a drought, the Secretary is authorized to participate in water banks established by a State.

SEC. 102. AVAILABILITY OF WATER ON A TEMPORARY BASIS.

(a) GENERAL AUTHORITY.—In order to mitigate losses and damages resulting from drought conditions, the Secretary may make available, by temporary contract, project and non-project water and may permit the use of facilities at Federal Reclamation projects for the storage or conveyance of project or non-project water, for use both within and outside an authorized project service area.

(b) SPECIAL PROVISIONS APPLICABLE TO TEMPORARY WATER SUPPLIES PROVIDED UNDER THIS SECTION.—

(1) TEMPORARY SUPPLIES.—Each temporary contract for the supply of water entered into pursuant to this section shall terminate no later than two years from the date of execution or upon a determination by the Secretary that water supply conditions no longer warrant that such contracts remain in effect, whichever occurs first. The costs associated with any such contract shall be repaid within the term of the contract.

(2) OWNERSHIP AND ACREAGE LIMITATIONS.—Lands not subject to Reclamation law that receive temporary irrigation water supplies under temporary contracts under this section shall not become subject to the ownership and acreage limitations or pricing provisions of Federal Reclamation law because of the delivery of such temporary water supplies. Lands that are subject to the ownership and acreage limitations of Federal Reclamation law shall not be exempted from those limitations because of the delivery of such temporary water supplies.

(3) TREATMENT UNDER RECLAMATION REFORM ACT OF 1982.—No temporary contract entered into by the Secretary under this section shall be treated as a "contract" as that term is used in sections 203(a) and 220 of the Reclamation Reform Act of 1982 (Public Law 97-293).

(4) AMENDMENTS OF EXISTING CONTRACTS.—Any amendment to an existing contract to allow a contractor to carry out the provisions of this title shall not be considered a new and supplemental benefit for purposes of the Reclamation Reform Act of 1982 (Public Law 97-293).

(c) CONTRACT PRICE.—The price for project water, other than water purchased pursuant to section 101(c), delivered under a temporary contract entered into by the Secretary under this section shall be at least sufficient to recover all Federal operation and maintenance costs and administrative costs, and an appropriate share of capital costs, including interest on such capital costs allocated to municipal and industrial water, except that, for project water delivered to non-project landholdings, the price shall include full cost (as defined in section 202(3) of the Reclamation Reform Act of 1982 (Public Law 97-293; 96 Stat. 1263; 43 U.S.C. 390bb)). For all contracts entered into by the Secretary under the authority of this title,

(1) the interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs expended pursuant to this Act shall be at a rate to be determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with remaining periods to maturity of one year occurring during the last month of the fiscal year preceding the date of execution of the temporary contract or,

(2) in the case of existing facilities the rate as authorized for that Federal Reclamation project or,

(3) in the absence of such authorized rate, the interest rate as determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction was initiated on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which were neither due nor callable for redemption for fifteen years from date of issue: *Provided*, That for all deliveries of water for municipal and industrial purposes from existing facilities to non-project contractors, the rate shall be as set forth in paragraph (1) of this subsection.

(d) FISH AND WILDLIFE.—The Secretary may make water from Federal Reclamation projects and non-project water available on a nonreimbursable basis for the purposes of protecting or restoring fish and wildlife resources, including mitigation losses, that occur as a result of drought conditions or the operation of a Federal Reclamation project during drought conditions. The Secretary may store and convey project and non-project water for fish and wildlife purposes, and may provide conveyance of any such water for both State and Federal wildlife habitat and for habitat held in private ownership. The Secretary may make available water for these purposes outside the authorized project service area. Use of the Federal storage and conveyance facilities for these purposes shall be on a nonreimbursable basis. Water made available by the Secretary in 1991 from the Central Valley Project, California, to the Grasslands Water District for the purpose of fish and wildlife shall be nonreimbursable.

(e) NON-PROJECT WATER.—The Secretary is authorized to store and convey non-project water utilizing Federal Reclamation project facilities for use outside and inside the authorized project service area for municipal and industrial uses, fish and wildlife, and agricultural uses. Except in the case of water supplied for fish and wildlife, which shall be nonreimbursable, the Secretary shall charge the recipients of such water for such use of Federal Reclamation project facilities at a rate established pursuant to section 102(c) of this Act.

(f) RECLAMATION FUND.—The payment of capital costs attributable to the sale of project or non-project water or the use of Federal Reclamation project facilities shall be covered into the Reclamation Fund and be placed to the credit of the project from which such water or use of such facilities is supplied.

SEC. 103. LOANS.

The Secretary of the Interior is authorized to make loans to water users for the purposes of undertaking construction, management, conservation activities, or the acquisition and transportation of water consistent with State law, that can be expected to have an effect in mitigating losses and damages, including those suffered by fish and wildlife, resulting from drought conditions. Such loans shall be made available under such terms and conditions as the Secretary deems appropriate: *Provided*, That the Secretary shall not approve any loan unless the applicant can demonstrate an ability to repay such loan within the term of the loan; *Provided further*, That for all loans approved by the Secretary under the authority of this section, the interest rate shall be the rate determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with periods to maturity comparable to the repayment period of the loan. The repayment period for loans issued under this section shall not exceed fifteen years. The repayment period for such loans shall begin when the loan is executed. Sections 203(a) and 220 of the Reclamation Reform Act of 1982 and sections 105 and 106 of Public Law 99-546 shall not apply to any contract to repay such loan. The Secretary shall notify the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives in writing of any loan which the Secretary intends to approve not less than 30 days prior to granting final approval.

SEC. 104. APPLICABLE PERIOD OF DROUGHT PROGRAM.

(a) IN GENERAL.—The programs and authorities established under this title shall become operative in any Reclamation State only after the Governor or Governors of the affected State or States, or on a reservation, when the governing body of the affected Tribe has made a request for temporary drought assistance and the Secretary has determined that such temporary assistance is merited, or upon the approval of a drought contingency plan as provided in title II of this Act.

(b) COORDINATION WITH BPA.—If a Governor referred to in subsection (a) is the Gov-

ernor of the State of Washington, Oregon, Idaho, or Montana, the Governor shall coordinate with the Administrator of the Bonneville Power Administration before making a request under subsection (a).

(c) TERMINATION OF AUTHORITY.—The authorities established under this title shall terminate ten years after the date of enactment of this Act.

TITLE II—DROUGHT CONTINGENCY PLANNING

SEC. 201. IDENTIFICATION OF OPPORTUNITIES FOR WATER SUPPLY CONSERVATION, AUGMENTATION AND USE.

The Secretary is authorized to conduct studies to identify opportunities to conserve, augment, and make more efficient use of water supplies available to Federal Reclamation projects and Indian water resource developments in order to be prepared for and better respond to drought conditions. The Secretary is authorized to provide technical assistance to States and to local and Tribal government entities to assist in the development, construction, and operation of water desalinization projects, including technical assistance for purposes of assessing the technical and economic feasibility of such projects.

SEC. 202. DROUGHT CONTINGENCY PLANS.

The Secretary, acting pursuant to the Federal Reclamation laws, utilizing the resources of the Department of the Interior, and in consultation with other appropriate Federal and State officials, Indian tribes, public, private, and local entities, is authorized to prepare or participate in the preparation of cooperative drought contingency plans (hereinafter in this title referred to as "contingency plans") for the prevention or mitigation of adverse effects of drought conditions.

SEC. 203. PLAN ELEMENTS.

(a) PLAN PROVISIONS.—Elements of the contingency plans prepared pursuant to section 202 may include, but are not limited to, any or all of the following:

(1) Water banks.

(2) Appropriate water conservation actions.

(3) Water transfers to serve users inside or outside authorized Federal Reclamation project service areas in order to mitigate the effects of drought.

(4) Use of Federal Reclamation project facilities to store and convey non-project water for agricultural, municipal and industrial, fish and wildlife, or other uses both inside and outside an authorized Federal Reclamation project service area.

(5) Use of water from dead or inactive reservoir storage or increased use of ground water resources for temporary water supplies.

(6) Water supplies for fish and wildlife resources.

(7) Minor structural actions.

(b) FEDERAL RECLAMATION PROJECTS.—Each contingency plan shall identify the following two types of plan elements related to Federal Reclamation projects;

(1) those plan elements which pertain exclusively to the responsibilities and obligations of the Secretary pursuant to Federal Reclamation law and the responsibilities and obligations of the Secretary for a specific Federal Reclamation project; and

(2) those plan elements that pertain to projects, purposes, or activities not constructed, financed, or otherwise governed by the Federal Reclamation law.

(c) DROUGHT LEVELS.—The Secretary is authorized to work with other Federal and State agencies to improve hydrologic data collection systems and water supply forecasting techniques to provide more accurate and timely warning of potential drought conditions and drought levels that would trigger the implementation of contingency plans.

(d) COMPLIANCE WITH LAW.—The contingency plans and plan elements shall comply with all requirements of applicable Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321), section 715(a) of the Water Resource Development Act of 1986 (33 U.S.C. 2265(a), and the Fish and Wildlife Coordination Act, and shall be in accordance with applicable State law.

(e) REVIEW.—The contingency plans shall include provisions for periodic review to assure the adequacy of the contingency plan to respond to current conditions, and such plans may be modified accordingly.

SEC. 204. RECOMMENDATIONS.

(a) APPROVAL.—The Secretary shall submit each plan prepared pursuant to section 202 to the Congress, together with the Secretary's recommendations, including recommendations for authorizing legislation, if needed.

(b) PACIFIC NORTHWEST REGION.—A contingency plan under subsection (a) for the State of Washington, Oregon, Idaho, or Montana, may be approved by the Secretary only at the request of the Governor of the affected State in coordination with the other States in the region and the Administrator of the Bonneville Power Administration.

SEC. 205. RECLAMATION DROUGHT RESPONSE FUND.

The Secretary shall undertake a study of the need, if any, to establish a Reclamation Drought Response Fund to be available for defraying those expenses which the Secretary determines necessary to implement plans prepared under section 202 and to make loans for nonstructural and minor structural activities for the prevention or mitigation of the adverse effects of drought.

SEC. 206. TECHNICAL ASSISTANCE AND TRANSFER OF PRECIPITATION MANAGEMENT TECHNOLOGY.

(a) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide technical assistance for drought contingency planning in any of the States not identified in section 1 of the Reclamation Act (Act of June 17, 1902, 32 Stat. 388), and the District of Columbia, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship, the Republic of Palau, the United States Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

(b) TECHNOLOGY TRANSFER PROGRAM.—The Secretary is authorized to conduct a Precipitation Management Technology Transfer Program to help alleviate problems caused by precipitation variability and droughts in the West, as part of a balanced long-term water resources development and management program. In consultation with State, Tribal, and local water, hydropower, water quality and instream flow interests, areas shall be selected for conducting field studies cost-shared on a 50-50 basis to validate and quantify the potential for appropriate precipitation management technology to augment stream flows. Validated technologies shall be transferred to non-Federal interests for operational implementation.

TITLE III—GENERAL AND MISCELLANEOUS PROVISIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Except as otherwise provided in section 303 of this Act (relating to temperature control devices at Shasta Dam, California), there is authorized to be appropriated not more than $90,000,000 in total for fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 302. AUTHORITY OF SECRETARY.

The Secretary is authorized to perform any and all acts and to promulgate such regulations as may be necessary and appropriate for the purpose of implementing this Act. In carrying out the authorities under this Act, the Secretary shall give specific consideration to the needs of fish and wildlife, together with other project purposes, and shall consider temporary operational changes which will mitigate, or can be expected to have an effect in mitigating, fish and wildlife losses and damages resulting from drought conditions, consistent with the Secretary's other obligations.

SEC. 303. TEMPERATURE CONTROL AT SHASTA DAM, CENTRAL VALLEY PROJECT.

The Secretary is authorized to complete the design and specifications for construction of a device to control the temperature of water releases from Shasta Dam, Central Valley Project, California, and to construct facilities needed to attach such device to the dam. There is authorized to be appropriated to carry out the authority of this section not more than $12,000,000.

SEC. 304. EFFECT OF ACT ON OTHER LAWS.

(a) CONFORMITY WITH STATE AND FEDERAL LAW.—All actions taken pursuant to this Act pertaining to the diversion, storage, use, or transfer of water shall be in conformity with applicable State and applicable Federal law.

(b) EFFECT ON JURISDICTION, AUTHORITY, AND WATER RIGHTS.—Nothing in this Act shall be construed as expanding or diminishing State, Federal, or Tribal jurisdiction or authority over water resources development, control, or water rights.

SEC. 305. EXCESS STORAGE AND CARRYING CAPACITY.

The Secretary is authorized to enter into contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities, pursuant to the Act of February 21, 1911 (43 U.S.C. 523), for the impounding, storage, and carriage of non-project water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes using any facilities associated with the Central Valley Project, Cachuma Project, and the Ventura River Project, California, the Truckee Storage Project, and the Washoe Project, California and Nevada. The Secretary is further authorized to enter into contracts for the exchange of water for the aforementioned purposes using facilities associated with the Cachuma Project, California.

SEC. 306. REPORT.

There shall be included as part of the President's annual budget submittal to the Congress a detailed report on past and proposed expenditures and accomplishments under this Act.

SEC. 307. FEDERAL RECLAMATION LAWS.

This Act shall constitute a supplement to the Federal Reclamation laws.

ENVIRONMENTAL CLEANUP AT THE PHOENIX INDIAN SCHOOL PROPERTY

MCCAIN AMENDMENT NO. 1452

Mr. SEYMOUR (for Mr. MCCAIN) proposed an amendment to the bill (S. 2034) to establish certain requirements for the Secretary of the Interior to un-

dertake environmental cleanup at the Phoenix Indian School property, as follows:

Delete section 1 of the bill in its entirety and substitute therefor the following:

SECTION 1. The Secretary of the Interior shall remove, at the earliest possible date, all asbestos within buildings and related infrastructure, including underground pipes, located on the 110 acre parcel of federal property known as the Phoenix Indian School. The obligation of the Secretary to carry out these activities shall continue beyond the date of transfer of the Phoenix Indian School property from federal ownership."

MINTING OF COINS IN COMMEMORATION OF THE 200TH ANNIVERSARY OF THE WHITE HOUSE

CRANSTON (AND OTHERS) AMENDMENT NO. 1453

Mr. MITCHELL for Mr. CRANSTON, for himself, Mr. WALLOP, Mr. KENNEDY, and Mr. HATCH) proposed an amendment to the bill (H.R. 3337) to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the White House, and for other purposes, as follows:

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

TITLE _____—COINS

SEC. _____01. DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS.

Subsection (d)(1) of section 5112 of title 31, United States Code, is amended by striking the fourth sentence.

SEC. _____02. DESIGN CHANGES REQUIRED FOR CERTAIN COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) The design on the reverse side of the half dollar, quarter dollar, dime coin, 5-cent coin and one-cent coin shall be selected for redesigning. One or more coins may be selected for redesign at the same time, but the first redesigned coin shall have a design commemorating the two hundredth anniversary of the ratification of the Bill of Rights to the United States Constitution for a period of 2 years after issuance. After the 2-year period, the bicentennial coin shall have its design changed in accordance with the provisions of this subsection. The minting of the first selected coin shall begin January 1993, and the issuance shall begin as soon as practical thereafter. All such redesigned coins shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. _____03. DESIGN ON OBVERSE SIDE OF COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) Subject to paragraph (2), the design on the obverse side of the half dollar, quarter dollar, dime coin, 5-cent coin, and one-cent coin shall contain the likenesses of those currently displayed and shall be considered for redesign. All such coin obverse redesigns shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. _____04. SELECTION OF DESIGNS.

The design changes for each coin authorized by the amendments made by this title shall take place at the discretion of the Secretary and shall be done at the rate of one or more coins per year, to be phased in over 6 years after the date of the enactment of this Act. In selecting new designs, the Secretary shall consider, among other factors, thematic representations of the following concepts from the Bill of Rights: freedom of speech and assembly; freedom of the press; the right to due process of law; and other appropriate themes. The designs shall be selected by the Secretary upon consultation with the United States Commission of Fine Arts.

SEC. _____05. REDUCTION OF THE NATIONS DEBT.

Subsection (a)(1) of section 5132 of title 31, United States Code, is amended by inserting after the third sentence the following: "Any profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

TITLE _____—JAMES MADISON COINS

SEC. _____01. SHORT TITLE.

This title may be cited as the "James Madison—Bill of Rights Commemorative Coin Act".

SEC. _____02. 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 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 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 title shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. _____03. SOURCES OF BULLION.

(a) GOLD.—The Secretary shall obtain gold for minting coins under this title 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. _____04. 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 title may be issued beginning on January 1, 1993.

(d) TERMINATION OF AUTHORITY.—Coins may not be minted under this title after December 31, 1993.

SEC. _____05. SALE OF COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall

sell the coins minted under this title 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 at a reasonable discount.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted under this title 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 per coin for the one dollar coins, and $3 per coin for the half dollar coins.

SEC. ____06. 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 title 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 title 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.

SEC. ____07. 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. ____08. 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 ___07 of this title. The expenditures and audit of surcharge funds deposited in the James Madison Memorial Fellowship Trust Fund under section ___07 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. ____09. 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 title.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

CORRECTIONS IN THE ENROLLMENT OF H.R. 3435

MURKOWSKI AMENDMENT NO. 1454

Mr. MURKOWSKI proposed an amendment to the concurrent resolution (S. Con. Res. 84) to correct the enrollment of H.R. 3435, the RTC funding bill, as follows:

SEC. . Subsection 12(b)(7)(vii) of Pub. L. No. 94-204, as amended, and subsection 9102(e) of Pub. L. No. 101-165, as amended, are each amended further by deleting in the appropriate place the phrase "real, personal," and substituting in lieu thereof the phrase "real, personal (including, but not limited to intangible assets such as financial instruments, notes, loans bonds, and licenses).".

REPEAL OF A SECTION OF THE RESOLUTION TRUST CORPORATION LEGISLATION

MURKOWSKI AMENDMENT NO. 1455

Mr. RIEGLE (for Mr. MURKOWSKI) proposed an amendment to the bill (S. 2131) to repeal section 618 of the Resolution Trust Corporation, Refinancing, Restructuring and Improvement Act of 1991, as follows:

Insert at the end:

SEC. . Subsection 12(b) (7) of Pub. L. No. 94-204, as amended, and subsection 9102(e) of Pub. L. No. 101-165, as amended, are each further amended by deleting in the appropriate place the phrase "real, personal," and substituting in lieu thereof the phrase "real, personal (including, but not limited to intangible assets sold or offered by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation such as financial instruments, notes, loans and bonds).".

HEALTH PROMOTION AND DISEASE PREVENTION ACT

KENNEDY AMENDMENT NO. 1456

Mr. FORD (for Mr. KENNEDY) proposed an amendment to the bill (H.R. 3635) to amend the Public Health Service Act to revise and extend the program of block grants for preventive health and human services, and for other purposes, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Health Promotion and Disease Prevention Act of 1991".

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

Sec. 1. Short title; table of contents.
Sec. 2. References.

TITLE I—HEALTH PROMOTION AND DISEASE PREVENTION ASSISTANCE

Sec. 101. Short title.

Subtitle A—Preventive Health and Health Services Block Grant

Sec. 110. Reauthorization of preventive health and health services block grant.
Sec. 111. Reporting and data collection improvements.
Sec. 112. Establishment of block grant requirement to address health promotion and disease prevention related to women's health.
Sec. 113. Reauthorization of State planning functions.
Sec. 114. Health promotion and disease prevention research centers.
Sec. 115. Use of allotments.
Sec. 116. Training of State and local public health personnel.

Subtitle B—National Health Objectives Project Grants to States

Sec. 121. National health objectives project grants to States.

Subtitle C—Categorical Programs

Sec. 131. National demonstration projects for women's health.
Sec. 132. Increased injury prevention activities.
Sec. 133. Establishment of an Office of Adolescent Health.
Sec. 134. Improvement in lead poisoning screening and prevention.
Sec. 135. Prevention and control of sexually transmitted diseases.
Sec. 136. Screening and early detection of prostate cancer.
Sec. 137. Special regional and national demonstration projects for minority health promotion and disease prevention.

TITLE II—COORDINATION OF HEALTH PROMOTION AND DISEASE PREVENTION ACTIVITIES

Sec. 201. Short title.
Sec. 202. Health information and health promotion.
Sec. 203. Interdepartmental Coordinating Council.
Sec. 204. Dissemination of health information.
Sec. 205. Report on national health status improvement.
Sec. 206. Health education curriculum.
Sec. 207. State offices of minority health.

TITLE III—PREVENTABLE CASES OF INFERTILITY

Sec. 301. Establishment of program of grants regarding preventable cases of infertility arising as result of sexually transmitted diseases.

TITLE IV—COMPREHENSIVE MATERNAL AND EARLY CHILDHOOD HEALTH CARE

Sec. 401. Short title.
Sec. 402. Migrant and community health center initiatives.
Sec. 403. Expansion of immunization programs for young children.
Sec. 404. Project grants for maternal and child preventive health and health care services.
Sec. 405. Birth defects proposal.

TITLE V-MISCELLANEOUS

Sec. 501. Establishment of an Advisory Council on Health Promotion and Disease Prevention.

Sec. 502. Responsibilities of members of the Commissioned Corps for health promotion and disease prevention.
Sec. 503. Responsibilities of the Surgeon General for disseminating information and recommendations.
Sec. 504. Change in name of Centers for Disease Control.
Sec. 505. Study concerning the reduction of the risk of bloodborne disease transmission.

SEC. 2. REFERENCES.

Except as otherwise provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

TITLE I—HEALTH PROMOTION AND DISEASE PREVENTION ASSISTANCE

SEC. 101. SHORT TITLE.

This title may be cited as the "Health Promotion and Disease Prevention Assistance Act of 1991".

Subtitle A—Preventive Health and Health Services Block Grant

SEC. 110. REAUTHORIZATION OF PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT.

Section 1901 (42 U.S.C. 300-w) is amended—

(1) in subsection (a), by striking out "$95,000,000" and all that follows through the end thereof and inserting the following: "$275,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.";

(2) in subsection (b), by striking out "at least $3,500,000" and inserting in lieu thereof "at least $7,000,000"; and

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

"(c) Notwithstanding any other provision of this subtitle and subject to the provisions of subsection (b), if amounts appropriated under subsection (a) for any fiscal year exceed $150,000,000 all of such amounts shall be used to carry out subpart 2 for such fiscal year.".

SEC. 111. REPORTING AND DATA COLLECTION IMPROVEMENTS.

(a) ANNUAL REPORTS.—Subsection (a) of section 1906 (42 U.S.C. 300w-5(a)) shall be amended to read as follows:

"(a)(1) Each State receiving an allotment, and each entity receiving a grant, under this part shall prepare and submit to the Secretary an annual report concerning the activities carried out by such State or grantee with amounts received under this part. Such reports shall describe the services provided using such amounts in accordance with subsections (a) and (e) of section 1904.

"(2) The Secretary, acting through the Centers for Disease Control and Prevention and in consultation with the States and the National Health Objectives Advisory Committee, shall develop uniform data items and data formats for the annual reports required under paragraph (1). Such uniform data items and formats shall constitute the minimum requirements that States must meet in submitting annual reports under paragraph (1).

"(3) In addition to complying with the uniform data item and format requirements of paragraph (2), an annual report submitted under paragraph (1) shall specifically provide if readily available—

"(A) the number of individuals provided with services in the service areas designated under subsections (a) and (e) of section 1904;

"(B) the percentage of minorities and disadvantaged individuals served within each of the service areas described in subparagraph (A); and

"(C) any other demographic information that the Secretary, after consultation with the States, determines appropriate.".

(b) INVESTIGATIONS.—Subsection (d) of section 1906 (42 U.S.C. 300w-5(d)) is amended to read as follows:

"(d) The Secretary, in consultation with the States and the National Health Objectives Advisory Committee, shall periodically update a set of priority national health status indicators, to be used to evaluate and monitor the overall health of the United States and of selected subgroups within the United States.".

(c) HEALTH STATUS REPORTS.—Section 1906 (42 U.S.C. 300w-5) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall determine the capability of each State to evaluate and submit a report, in a uniform format, concerning the health status of the State as measured in terms of the health objectives parameters as described in subsection (d).

"(2)(A) Except as provided in subparagraph (B), with respect to a State that is determined by the Secretary under paragraph (1) to be unable to adequately evaluate its health status, such State shall be required to utilize not more than 10 percent of the amounts paid to the State under section 1903 for a fiscal year to develop the capacity to make such an evaluation. Amounts under section 1903 shall be so utilized until such time as the Secretary determines that such capacity has been achieved by the State.

"(B) The Secretary may waive the requirement of subparagraph (A) in the case of a State, territory or Indian tribe that is determined by the Secretary to be unable to develop the capacity required under paragraph (1) through the utilization of the funds required under such subparagraph.

"(3) With respect to entities that are eligible to receive grants under this part, that apply for such grants, and that the Secretary determines do not have the resources to efficiently establish the capacity for evaluating their health status as provided for in paragraph (1), the Secretary, in consultation with the State agencies, may provide technical assistance to enable such entities to make such evaluations and such entities shall be exempt from the requirements of paragraph (1).

"(4) An entity described in paragraph (3) shall indicate in the annual report submitted by such entity under subsection (a) the status of such entity under such paragraph and the Secretary shall review such status once during every 3-year period.".

(d) REPORT TO CONGRESS.—Section 1906 (42 U.S.C. 300w-5(b)) (as amended by subsection (a)) is amended—

(1) by striking out paragraph (6) of subsection (b); and

(2) by adding at the end thereof the following new subsection:

"(f) Not later than 3 years after the date of enactment of this subsection, and every 3 years thereafter, the Secretary shall prepare and submit a report to Congress concerning the activities of the States that have received funds under this part. Such report shall include State compilations of the information contained in the reports prepared under subsection (a), and any recommendations for appropriate changes in legislation necessary to facilitate improvement in the health status indicators described in subsection (d), facilitate the implementation of the State plans described in subsection (a)(3)(A) and ensure compliance with section 1905(c)(8), and to facilitate other changes determined appropriate by the Secretary under this part.".

(e) APPLICATION.—Section 1905 (42 U.S.C. 300w-4) is amended—

(1) in subsection (c)—

(A) by striking out "and" at the end of paragraph (6);

(B) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(8) agrees that continuing education credits in the utilization of universal precautions, and infection control procedures for the prevention of bloodborne disease transmission, shall be required as part of those credits required for health professional relicensure."; and

(2) in subsection (d), by striking out the last sentence and inserting in lieu thereof the following new sentences: "The description shall include, a summary of the manner in which the funds will be allocated under section 1904(a)(1), and which health status indicators (as described in section 1906(d)) such allocations are intended to address. The description shall also include prior year information concerning the State's health status according to the health status indicators (as described in section 1906(d)).".

SEC. 112. ESTABLISHMENT OF BLOCK GRANT REQUIREMENT TO ADDRESS HEALTH PROMOTION AND DISEASE PREVENTION RELATED TO WOMEN'S HEALTH.

Section 1904 (42 U.S.C. 300w-3) is further amended by adding at the end thereof the following new subsection:

"(e) Each State that receives payments under section 1903 shall demonstrate that a portion of such payments are being utilized in each fiscal year for health promotion and disease prevention activities related to women's health problems, such as osteoporosis, physical abuse, diabetes and tobacco use.".

SEC. 113. REAUTHORIZATION OF STATE PLANNING FUNCTIONS.

Section 7 of the Year 2000 Health Objectives Planning Act (Public Law 101-582) is amended to read as follows:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of carrying out this Act and for the establishment and operation of State Health Objectives Advisory Committees under section 19101(b) of the Public Health Service Act, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

SEC. 114. HEALTH PROMOTION AND DISEASE PREVENTION RESEARCH CENTERS.

Section 1706(e) (42 U.S.C. 300u-5(e)) is amended by striking out "$3,000,000" and all that follows through the end thereof and inserting "$10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

SEC. 115. USE OF ALLOTMENTS.

Section 1904(a)(1) (42 U.S.C. 300w-4(a)(1)) is amended in the matter preceding subparagraph (A) by striking out "and (c)" and inserting in lieu thereof "(c), (e), and (f)".

SEC. 116. TRAINING OF STATE AND LOCAL PUBLIC HEALTH PERSONNEL.

Part A of title XIX (42 U.S.C. 300w et seq.) is amended by adding at the end thereof the following new section:

"SEC. 1910A. TRAINING.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Dis-

ease Control and Prevention, shall, to the extent appropriations are available, provide assistance for the professional training of public health personnel, including—

"(1) the identification of new knowledge bases and skills for State and local public health personnel that are reasonably necessary and appropriate to permit the States to achieve the national health priorities; and

"(2) encouraging the training and education of appropriate numbers of such personnel, including racial and ethnic minority personnel, in such knowledge bases and skills, including cross cultural skills, by establishing cooperative agreements with schools of public health, schools of nursing, schools of medicine, and other institutions that train and educate such personnel; and

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

Subtitle B—National Health Objectives Project Grants to States

SEC. 121. NATIONAL HEALTH OBJECTIVES PROJECT GRANTS TO STATES.

Part A of title XIX (42 U.S.C. 300w et seq.) is amended—

(1) in the part heading, to read as follows:

"PART A—PREVENTIVE HEALTH AND NATIONAL HEALTH OBJECTIVES GRANTS";

(2) by inserting after the part heading the following:

"Subpart 1—Preventive Health and Health Services Block Grant";

and

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

"Subpart 2—National Health Objectives Project Grants to States

"SEC. 1910D. OPERATION OF SUBPART.

"The Secretary, in accordance with subsection (c) of section 1901, shall use amounts appropriated under subsection (a) of such section for a fiscal year to carry out this subpart in such fiscal year.

"SEC. 1910E. DEFINITIONS AND ADMINISTRATION.

"(a) DEFINITIONS.—As used in this subpart:

"(1) ADVISORY COMMITTEE.—The term 'Advisory Committee' means the National Health Objectives Advisory Committee established under section 1910K(a).

"(2) CORE PRIORITIES.—The term 'core priorities' means the three national health priorities that are designated by the Secretary as 'core national health priorities' and that must be included in the State health objectives provided in the State health objectives plan of each State.

"(3) NATIONAL HEALTH PRIORITIES.—The term 'national health priorities' means the priorities established under section 1910K(b).

"(4) STATE AGENCY.—The term 'State agency' means the department, agency, commission, or other entity designated and vested with authority under State law over matters concerning public health.

"(5) STATE PLAN.—The term 'State plan' means the health objectives plan of a State submitted under section 1910I.

"(6) STATE REPORT.—The term 'State report' means the annual report of a State required under section 1910J.

"(b) ADMINISTRATION.—The Secretary shall carry out this subpart through the Centers for Disease Control and Prevention.

"SEC. 1910F. ALLOTMENTS.

"(a) IN GENERAL.—Amounts available pursuant to section 1910D for each fiscal year shall be utilized to make allotments in accordance with subsections (b), (c), and (d).

"(b) FORMULA.—The amount of an allotment to a State under subsection (a) shall be equal to the amount of the allotment for such State under section 1902 for fiscal year 1992.

"(c) REMAINDER.—From the remainder of the amounts available pursuant to section 1910D, the Secretary shall allot in each fiscal year to each State an amount that equals—

"(1) $12,500, if the population of the State does not exceed 50,000;

"(2) $37,500, if the population of the State exceeds 50,000 but does not exceed 450,000;

"(3) $500,000, if the population of the State exceeds 450,000 but does not exceed 1,000,000;

"(4) $750,000, if the population of the State exceeds 1,000,000 but does not exceed 3,000,000;

"(5) $1,000,000, if the population of the State exceeds 3,000,000 but does not exceed 6,000,000;

"(6) $1,250,000, if the population of the State exceeds 6,000,000 but does not exceed 10,000,000;

"(7) $1,500,000, if the population of the State exceeds 10,000,000 but does not exceed 15,000,000; and

"(8) $2,000,000, if the population of the State exceeds 15,000,000.

"(d) RELATIVE POPULATION.—To the extent that all amounts available for allotment under subsection (a) for each fiscal year are not otherwise allotted to States under subsection (c), such excess shall be allotted to each State in an amount that bears the same ratio to such excess amount for such fiscal year as the total population of the State bears to the population of all States.

"(e) ADJUSTMENT.—If for any fiscal year the amount available under section 1910D is less than the total of all amounts listed under subsection (b), the amount allotted to each State shall be an amount that bears the same ratio to the total of all amounts available for allotment under such section as the amount of the allotment that the State is entitled to under subsection (b) bears to the total of all such amounts under such paragraph.

"(f) INDIANS.—

"(1) IN GENERAL.—If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subpart be provided directly by the Secretary to such tribe or organization; and

"(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this subpart;

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for the fiscal year the amount determined under paragraph (2).

"(2) ELIGIBILITY.—For an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

"(3) DEFINITIONS.—As used in this subsection, the terms 'Indian tribe' and 'tribal organization' shall have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.

"SEC. 1910G. PAYMENTS UNDER ALLOTMENTS TO STATES.

"(a) IN GENERAL.—

"(1) PLAN REQUIREMENT.—For each fiscal year, the Secretary shall make payments from amounts available under section 1910D for that fiscal year, as provided for in section 6503(a) of title 31, United States Code, to each State, if such State has submitted an approved State plan, from its allotment under section 1910F.

"(2) CARRYOVER FUNDS.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"(b) SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) IN GENERAL.—

"(A) AIDING GRANTEE IN CARRYING OUT DUTIES.—Upon the request of a grantee under subsection (a), the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the grantee in carrying out such subsection and, for such purposes, may detail to the grantee any officer or employee of the Department of Health and Human Services.

"(B) LIMITATION.—With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of the grant to the grantee involved by an amount equal to the costs of detailing personnel and fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"(2) USE OF REDUCTION.—The amount by which any payment is reduced under paragraph (1) shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be considered to be subpart of the payment and to have been paid to the State.

"SEC. 1910H. USE OF ALLOTMENTS.

"(a) STATE PLAN.—A State shall utilize amounts paid to it under section 1910G, from the allotment of such State under section 1910F, to develop and implement a State plan, in accordance with section 1910I, in order to—

"(1) develop and collect data to assess the public health needs and health status of the individuals, including minorities, that reside in the State;

"(2) provide assistance for planning necessary to assist projects and programs to be included in the State plan;

"(3) provide assistance to projects and programs described in the State plan; and

"(4) make appropriate State data and the State plan available to local health departments to facilitate improved local planning.

"(b) LIMITATIONS.—A State shall not use amounts paid to it under section 1910G, to—

"(1) provide inpatient services;

"(2) make cash payments to intended recipients of health services;

"(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment; or

"(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(c) ADMINISTRATION.—Not more than 10 percent of the total amount paid to a State under section 1910G from the State allotment under section 1910F for any fiscal year shall be used for administering the funds made available under section 1910G. The State shall pay from non-Federal sources any additional costs of administering such funds. For purposes of this subsection, the term 'administration' shall not be construed to include collection or assessment of data or assistance provided by States for the planning or implementation of projects and programs.

"SEC. 1910I. STATE HEALTH OBJECTIVES PLAN AND DESCRIPTION OF ACTIVITIES.

"(a) IN GENERAL.—To receive a payment under section 1910G from the State allotment for a fiscal year under section 1910F, a State shall prepare and submit, to the Secretary, a State health objectives plan at such time, in such manner, and containing such information as the Secretary shall require. Such State plan shall—

"(1) be developed by the State health agency in consultation with the State Health Objectives Advisory Committee established under subsection (b);

"(2) meet the requirements of subsection (c); and

"(3) contain assurances satisfactory to the Secretary that the State will meet the requirements of subsection (d).

"(b) ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—Not later than 6 months after the enactment of this subpart, each State shall establish a State Health Objectives Advisory Committee, that shall be chaired by the State health officer, and shall consist of members of the public and health directors that represent local health departments.

"(2) REPRESENTATIVES.—States are encouraged to include entities receiving grants under this subpart, representatives of community-based organizations including minority community-based organizations, and a representative of an academic institution that trains public health professionals, as part of the State committee established under paragraph (1).

"(3) MEETINGS.—The State Health Objectives Advisory Committee shall meet not less than twice each year.

"(4) RESPONSIBILITIES.—The Advisory Committee established under paragraph (1) shall review and make recommendations to the State health agency concerning—

"(A) health assessment and policy development and assurance functions associated with the program established under this subpart; and

"(B) State plans, data collection efforts, the establishment of State health objectives, coordination of efforts funded under this subpart, coordination with other similar programs, public hearings, and the allocation of funds within the State annual report.

"(c) REQUIREMENTS.—A State plan submitted under subsection (a) shall—

"(1) be developed in consultation with the State Health Objectives Committee;

"(2) contain a specific set of not less than five State health objectives that shall be chosen from the national health priorities described by the Secretary under section 1910K, and that shall include all core priorities identified under such section;

"(3) contain an annual budget that describes the manner in which the payments made under section 1910G are to be used by the State, and such budget shall—

"(A) specify the portion of such funds that are to be used at each level of the State or local government, and the portion of such funds that are to be allocated for grants to local agencies of public health, community-based organizations, including minority community-based organizations, voluntary nonprofit health organizations, and other entities selected by the State help meet State objectives under paragraph (7); and

"(B) commit the State to use not less than 80 percent of such payments to meet State objectives that, as determined by the State agency after an analysis of the national health priorities, and based on the available State data described in paragraph (4), are critical to improving the health status of the individuals who reside within the State;

"(4) in terms of each State objective—

"(A) provide assurances satisfactory to the Secretary that there is a minimum set of data available to satisfactorily measure the health status of individuals including racial and ethnic minorities, who reside within the State;

"(B) utilize the data described in subparagraph (A) to identify the improvement that the State expects to make in the health status of individuals who reside within the State during the term of the State plan;

"(C) specify the particular strategies, projects and programs intended to be used by the State to improve the health status of individuals who reside within the State;

"(D) specify the methods intended to be used by the State to evaluate the progress made by the State in improving the health status of individuals who reside within the State; and

"(E) provide services targeted at improving the health status of individuals who reside within the State at the level of State or local government that the State determines are most likely to be effective in achieving the State objectives especially with respect to addressing inner city and rural disparities in health status indicators;

"(5) provide for the establishment of practices and procedures through which the State shall assist local health agencies in the development of community health plans and to monitor the progress of local health agencies, community-based organizations, including minority community-based organizations, and health organizations in implementing the State objectives;

"(6) identify public health personnel requirements that the State determines are reasonably necessary and appropriate to permit the State to achieve the State objectives;

"(7) identify the mechanism by which the State shall select, and allocate assistance provided under this subpart to local units of government, local agencies of public health, community-based health, including minority community-based organizations, voluntary nonprofit health organizations, and other entities within the State to help meet the State objectives;

"(8) contain a description (that may be revised throughout the year as may be necessary to reflect substantial changes in the projects and programs assisted by the State) of the intended use of the payments the State will receive under section 1910G for the fiscal year for which the State plan is submitted, including information concerning the projects and programs to be supported and services to provided, which shall be made available to the public within the State in a manner that will facilitate comment from any individual during the period of the development of the description and after the transmittal of such; and

"(9) contain a plan for conducting health education and disease prevention programs for identifiable racial and ethnic communities. .

"(d) ASSURANCES.—As part of the State plan required under subsection (a), a State shall provide assurances satisfactory to the Secretary that such State—

"(1) shall use the amounts allotted to it under section 1910F in accordance with the requirements of the State plan and of this subpart;

"(2) shall establish reasonable criteria for the evaluation of the effective performance of entities that receive assistance from the allotment to the State under this subpart;

"(3) shall identify those populations including racial and ethnic minorities, areas, and localities in the State that demonstrate a need for the services for which funds may be provided by the State under this subpart;

"(4) shall use amounts made available under section 1910G for any period to supplement and increase the level of State, local, and other Federal assistance that would, in the absence of amounts available under section 1910G, be made available for the programs and activities for which funds are provided for under this subpart, and shall not use funds made available under this subpart to supplant such State, local, and other Federal funds; and

"(5) shall require the State Health Objectives Advisory committee to consult with community-based minority organizations.

"SEC. 1910J. STATE HEALTH OBJECTIVES REPORT.

"(a) IN GENERAL.—Not later than 120 days after the end of each fiscal year for which assistance is provided under this subpart, each State, in cooperation with participating local units of government, shall prepare and submit, to the Secretary, an annual State health objectives report concerning the activities of the State under this subpart, that meets the requirements of this section.

"(b) REQUIREMENTS.—A State report submitted under subsection (a) shall be in such form and contain such information as the Secretary determines, after consultation with the heads of the State agencies and the Comptroller General, to be necessary—

"(1) to determine whether funds were expended by the State in accordance with this subpart and consistent with the needs within the State as proscribed in the State plan;

"(2) to secure a description of the projects and programs within the State operated or assisted with amounts provided under allotments made under this subpart; and

"(3) to secure a record of—

"(A) the purposes for which amounts provided under this subpart were expended;

"(B) the recipients of such funds; and

"(C) the progress made toward achieving the purposes for which such funds were provided.

"(c) UNIFORM DATA ITEM.—A State report submitted under subsection (a) shall include information concerning at least one uniform data item on each national health priority described in section 1910K(b) to be determined in consultation with the Secretary.

"(d) UNIFORM DATA SETS.—Each State shall report uniform data sets, as prescribed by the Secretary under section 1910K(f), for each national health priority addressed in the State plan that shall commence not later than 4 years after the date of enactment of this subpart.

"(e) ADDITIONAL CONTENTS.—The Secretary may require States to include additional information in the State report submitted under this section.

"(f) AVAILABILITY.—The State shall ensure that the State report is available for public inspection within the State, and the State Health Official shall provide copies at cost, on request, to any interested individual.

"SEC. 1910K. RESPONSIBILITIES OF THE SECRETARY.

"(a) ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—Not later than 3 months after the enactment of this subpart, the Secretary, acting through the Assistant Secretary for Health, shall establish an advisory committee, to be known as the 'National Health Objectives Advisory Committee', to advise the Secretary concerning national health priorities.

"(2) COMPOSITION.—The Advisory Committee shall be composed of 12 members, of which—

"(A) one member shall be the Assistant Secretary for Health, who shall serve as the chairperson of the Advisory Committee;

"(B) two members shall be appointed by the Secretary from the general public;

"(C) one member shall be appointed by the Administrator of the Environmental Protection Agency;

"(D) two member shall be appointed by the Association of State and Territorial Health Officials;

"(E) one member shall be appointed by the National Association of County Health Officials;

"(F) one member shall be appointed by the United States Conference of Local Health Officials;

"(G) one member shall be appointed by the Association of Schools of Public Health;

"(H) one member shall be appointed by the American Public Health Association;

"(I) one member shall be the Director of the Centers for Disease Control and Prevention; and

"(J) one member shall be the Director of the Office of Disease Prevention and Health Promotion.

"(3) MEETINGS AND DUTY.—The Advisory Committee shall meet not less than once each year for the purpose of providing advice to the Secretary concerning the selection, revision, implementation, and evaluation of the national health priorities, and the development and adoption of the uniform data set.

"(b) NATIONAL HEALTH PRIORITIES.—The Secretary, in consultation with the heads of other Federal agencies and the Advisory Committee, and taking into account the 'Year 2000 Health Objectives' developed by the United States Public Health Service, shall establish—

"(1) national health priorities that shall form the basis for all activities that receive assistance under this subpart;

"(2) from the priorities established under paragraph (1), a set of three core priorities that shall be included in each State plan; and

"(3) in cooperation with other appropriate national organizations, an estimate of the personnel and training that will be needed throughout the United States to accomplish the priorities established under paragraph (1).

"(c) REVIEW OF STATE PLANS.—The Secretary shall review each proposed State plan, and each proposed amendment thereto, submitted by a State under section 1910I, and approve each such plan or amendment, or each portion of such plan or amendment, that the Secretary determines complies with the requirements of this subpart.

"(d) STATE REPORT.—The Secretary shall receive and review each State report submitted by a State under section 1910J, and shall compile, evaluate, and prepare and submit, every 3 years, to the appropriate Committees of Congress and the President, an annual national health objectives report concerning the data and information contained in such State report.

"(e) OTHER ASSISTANCE.—The Secretary shall provide consultation, guidance, and technical assistance to State, and through State to local units of government, and to other entities participating in the programs created under this subpart, to—

"(1) assist in the development of data sets as required under section 1910I, and uniform data items required under section 1910J; and

"(2) assist States with the development of local and State plans, or amendments to such plans, that the Secretary determines does not comply with the requirements of this subpart, in revising such plans or amendments to comply with the requirements of this subpart.

"(f) UNIFORM DATA SETS.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with State and local health officials and the National Health Objectives Advisory Committee, shall establish uniform data sets for each of the national health priorities described in subsection (b). Such data sets shall be consistent with those established under section 1906 and shall be adopted not later than 2 years after the date of the enactment of this subpart.

"(g) IMPLEMENTATION.—In implementing the provisions of sections 1910I, 1910J and this section, with respect to data sets and data items, the Secretary shall, to the extent practicable, rely on previously developed uniform data sets, systems and indicators.

"(h) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this subpart, and every 3 years thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the activities of the States that have received funds under this subpart. Such report shall include State compilations of the information contained in the reports prepared under section 1910J, and any recommendations for appropriate changes in legislation necessary to facilitate improvement in the health status of the United States and of selected subgroups within the United States, facilitate the implementation of the State plans described in section 1910I and to facilitate other changes determined appropriate by the Secretary under subpart 2.".

Subtitle C—Categorical Programs

SEC. 131. NATIONAL DEMONSTRATION PROJECTS FOR WOMEN'S HEALTH.

Section 317(k) (42 U.S.C. 247b(k)) is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(2) by inserting after paragraph (3) the following new paragraph:

"(4)(A) The Secretary shall award grants to States, and in consultation with State health agencies, to political subdivisions of States, community based organizations, and other public and nonprofit private entities for—

"(i) the establishment of demonstration projects for the prevention of conditions or diseases that adversely affect women;

"(ii) the establishment of demonstration projects for the promotion of women's health; and

"(iii) the development and dissemination of information for health promotion and disease prevention related to issues of women's health.

"(B) The projects and activities carried out under this subsection shall have an emphasis on, but not be restricted to the prevention or control of osteoporosis, coronary heart disease, diabetes, obesity and tobacco use.

"(C) There are authorized to be appropriated to carry out this paragraph, $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

SEC. 132. INCREASED INJURY PREVENTION ACTIVITIES.

(a) INJURY CONTROL ACTIVITIES.—Section 392 (42 U.S.C. 280b-1) is amended by adding at the end thereof the following new subsections:

"(c) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may establish a national information clearinghouse to facilitate the exchange and dissemination of information concerning the prevention and control of injuries in homes, schools, public buildings and other such locations not otherwise covered by the Occupational Safety and Health Act of 1970.

"(d) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to, or enter into contracts with, State departments of health and education, and in consultation with State authorities, to local departments of health and education, for the purposes of helping public schools to implement effective programs to prevent injuries and behaviors associated with unnecessary risks for injuries. As a condition of awarding a grant under this subsection to a State or local department of education, the Secretary shall require that such department of education coordinate with the relevant department of health in utilizing amounts received under such grant.

"(e)(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants to States, and in consultation with State health agencies, to political subdivisions of States, community based organizations, and other public and nonprofit private entities for the establishment of 10 demonstration projects for the prevention and control of injuries in homes, schools, public buildings and other such locations not otherwise covered by the Occupational Safety and Health Act of 1970.

"(2)(A) Not more than 50 percent the amount appropriated under section 394 for fiscal year 1993 that exceeds $30,000,000, but in no event in excess of $2,000,000, shall be used to establish five demonstration projects under paragraph (1) in such fiscal year.

"(B) Not more than 50 percent of the amount appropriated under section 394 for fiscal year 1994 that exceeds the amount appropriated under such section for fiscal year 1993, but in no event in excess of $2,000,000, shall be used to establish the remaining five demonstration projects required under paragraph (1) in such fiscal year. Additional projects may be established under such paragraph if appropriations remain available.

"(3) The projects and activities carried out under this subsection shall place an emphasis on, but not be restricted to, childhood injuries, particularly injuries to children under five years of age, prevention of motor vehicle injuries, violence and falls.".

(b) REPORT AND RECOMMENDATIONS.—Section 393 (42 U.S.C. 280b-2) is amended—

(1) in the section heading to read as follows:

"REPORT AND RECOMMENDATIONS";

(2) by inserting "(a)" after the section designation; and

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

"(b) The Director of the Centers for Disease Control and Prevention shall biennially prepare and submit to the Secretary a report, together with recommendations and guidelines, concerning new technologies and practices based on established research findings of efficacy for injury prevention and control. The Secretary shall consider such recommendations and guidelines in determining whether to approve the purchase or lease of equipment, including vehicles, for

use by the Department of Health and Human Services. The Secretary shall forward such recommendations and guidelines to the Congress, the Director of the General Services Administration, and any other agency head or State Governor that requests a copy of such recommendations and guidelines.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 394 (42 U.S.C. 280b–3) is amended—

(1) by striking out "$10,000,000" and all that follows and inserting "$40,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.";

(2) by inserting "(a)" after the section designation; and

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

"(b) The Secretary shall only make grants under section 392(e) for a fiscal year if amounts appropriated under subsection (a) for such fiscal year are in excess of the amount appropriated under this section for fiscal year 1991.".

SEC. 133. ESTABLISHMENT OF AN OFFICE OF ADOLESCENT HEALTH.

Title III (42 U.S.C. 241 et seq.) is amended by adding at the end thereof the following new part:

"Part M—Adolescent Health

"SEC. 399F. OFFICE OF ADOLESCENT HEALTH.

"(a) ESTABLISHMENT.—The Secretary shall establish an Office of Adolescent Health (hereafter referred to in this part as the 'Office') and provide administrative support and support services to the Director of such Office.

"(b) DIRECTOR.—The Office shall be headed by a Director (hereafter referred to in this part as the 'Director') who shall be appointed by the Secretary.

"(c) PURPOSE AND DUTIES.—It shall be the purpose of the Office to ensure the sufficiency of the efforts of the Federal government to improve the health status of adolescents. The Office shall—

"(1) coordinate all activities within the Department that relate to the monitoring of trends in the health status of adolescents through data collection;

"(2) coordinate all activities (including research) within the Department concerning the design of, support for, and evaluation of, adolescent health services;

"(3) establish a national information clearinghouse to facilitate the exchange of information concerning all Federal research activities and initiatives as such relates to adolescent health and to facilitate access to such information;

"(4) oversee multidisciplinary disease, injury, and disability prevention research projects concerning conditions and diseases unique to, more prevalent in, or neglected in adolescents;

"(5) coordinate the training of health providers who work with adolescents, particularly nurse practitioners, physician assistants, social workers;

"(6) establish within the Office an advisory committee under section 399H to be known as the National Advisory Committee on Adolescent Health;

"(7) provide advice to Congress concerning adolescent health issues; and

"(8) in collaboration with the National Adolescent Health Advisory Commission, develop a national strategic plan to access adolescent health issues.

"SEC. 399G. ADOLESCENT HEALTH INITIATIVES.

"(a) GRANTS.—The Secretary, acting through the Office of Adolescent Health, shall award grants to, or enter into contract with, State health agencies and other eligible applicants to assist such applicant in funding activities authorized under an application approved under section (d).

"(b) USE OF AMOUNTS.—Amounts provided under a grant or contract under subsection (a) shall be used by the recipients of such amounts to fund multidisciplinary projects based on established research findings of efficacy that are designed to—

"(1) use new and innovative methods to train health care practitioners to provide services to adolescents; and

"(2) demonstrate and evaluate innovative multidisciplinary methods and models designed to prevent adolescent violence.

"(c) ELIGIBLE APPLICANTS.—To be eligible to receive a grant or contract under this section an entity shall be a State or local health department, nonprofit organization and public or nonprofit college, university or school of, or program that specializes in, adolescent medicine, nursing, medicine, osteopathy, social work, psychology, public health, and programs that train physician assistants and shall prepare and submit to the Secretary for approval an application under subsection (d). Eligible entities shall not include for-profit entities, either directly or through a subcontract or subgrant.

"(d) APPLICATIONS.—

"(1) SUBMISSION.—To be eligible to receive a grant or contract under subsection (a) an entity shall prepare and submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require.

"(2) REQUIREMENTS.—Applications submitted under this subsection shall—

"(A) be submitted by a coalition or consortium of at least three eligible applicants with the express purpose of establishing long-term collaborative relationships with adolescent health care providers; and

"(B) provide any additional information required by the Secretary.

"(e) PEER REVIEW.—

"(1) IN GENERAL.—Each application for a grant or contract under this section shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application.

"(2) ESTABLISHMENT.—The Secretary shall establish such peer review groups as may be necessary to carry out paragraph (1). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers or employees of the United States.

"(3) REPORT OF FINDINGS.—With respect to applications referred to in paragraph (1), a peer review group established pursuant to such paragraph shall report its finding and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval, and awards should be made in the order of priority from the peer review process.

"(4) ADMINISTRATION.—This paragraph shall be carried out by the Secretary.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.

"SEC. 399H. NATIONAL ADOLESCENT HEALTH ADVISORY COMMISSION.

"(a) COMPOSITION.—The Advisory Commission (hereafter referred to in this section as the 'Commission') established under section 399F(c)(6) shall be composed of—

"(1) the Assistant Secretary of Health;

"(2) the Assistant Secretary of Education for Elementary and Secondary Schools;

"(3) a representative of the Health Resources and Services Administration to be appointed by the Secretary;

"(4) a representative of the Centers for Disease Control and Prevention to be appointed by the Secretary;

"(5) a representative of the National Institute of Health to be appointed by the Secretary;

"(6) five individuals appointed by the Secretary from among physicians, practitioners, scientists, and other health professionals whose clinical practice and research specialization focus on adolescent health; and

"(7) a parent of an adolescent to be appointed by the Secretary.

"(b) APPOINTMENTS.—Not later than April 1, 1992, the Secretary shall appoint the members of the Commission in accordance with subsection (a).

"(c) MEETINGS.—The Commission shall meet not less than twice annually to provide advice and make recommendations to the Secretary and to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives, with respect to—

"(1) priority research needs;

"(2) appropriate research activities to be supported by the Office;

"(3) deficiencies and needs for improvements in existing data bases concerning adolescent health status and steps that should be taken to eliminate such deficiencies; and

"(4) identify problems in adolescent health and make recommendations for the resolution of such problems.

"(d) REPORTS.—

"(1) INTERIM REPORTS.—Not later than 1 year and 3 years after the date on which the initial meeting of the Commission is held, the Commission shall prepare and submit to the individual and entities described in subsection (c) a progress report concerning the activities of the Commission.

"(2) FINAL REPORT.—Not later than April 1, 1996, the Commission shall prepare and submit to the individuals and entities described in subsection (c) a final report concerning its activities.

"(e) STAFF SUPPORT FOR THE ADVISORY COMMISSION.—The Director of the Centers for Disease Control and Prevention, acting through the Division of Adolescent and School Health, shall provide the staff support for the Commission.".

SEC. 134. IMPROVEMENT IN LEAD POISONING SCREENING AND PREVENTION.

(a) AUTHORITY FOR GRANTS.—

(1) IN GENERAL.—Section 317A(a) (42 U.S.C. 247b–1(a)) is amended to read as follows:

"(a) AUTHORITY FOR GRANTS.—

"(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to public and nonprofit private entities (including States and political subdivisions of States) for the initiation and expansion of community programs designed—

"(A) to provide, for infants and children—

"(i) screening for elevated blood-lead levels;

"(ii) referral for treatment of such levels; and

"(iii) referral for environmental intervention associated with such levels; and

"(B) to provide education about childhood lead poisoning.

"(2) PROVISION OF ALL SERVICES AND ACTIVITIES THROUGH EACH GRANTEE.—In making grants under paragraph (1), the Secretary shall ensure that each of the services and activities described in such paragraph is provided through each grantee under such para-

graph. The Secretary may authorize such a grantee to provide the services and activities directly, or through arrangements with other providers."; and

(2) CONFORMING AMENDMENTS.—Section 317A (42 U.S.C. 247b-1) is amended—

(A) by redesignating subsections (b) through (j) as subsections (d) through (l), respectively;

(B) in subsection (h) (as so redesignated)—

(i) in paragraph (1), by striking the comma after "recipient" and inserting a semicolon; and

(ii) in paragraph (2), by striking the comma at the end and inserting a semicolon; and

(C) by inserting before subsection (d) (as so redesignated) the following:

"(c) PRIORITY IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give priority to applications for programs that will serve areas with a high incidence of elevated blood-lead levels in infants and children.".

(b) ESTABLISHMENT OF REQUIREMENT REGARDING STATUS AS MEDICAID PROVIDER.—Section 317A, as amended by subsection (a)(2)(A), is further amended by inserting after subsection (a) the following new subsection:

"(b) STATUS AS MEDICAID PROVIDER.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary may not make a grant under subsection (a) unless, in the case of any service described in such subsection that is made available pursuant to the State plan approved under title XIX of the Social Security Act for the State involved—

"(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

"(B) the applicant will enter into an agreement with a provider under which the provider will provide the service, and the provider has entered into such a participation agreement and is qualified to receive such payments.

"(2) WAIVER REGARDING CERTAIN SECONDARY AGREEMENTS.—

"(A) In the case of a provider making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the provider does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

"(B) A determination by the Secretary of whether a provider referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the provider accepts voluntary donations regarding the provision of services to the public.".

(c) GRANT APPLICATION.—

(1) COORDINATION.—Section 317A, as amended by subsection (a)(2)(A), is further amended—

(A) by striking out subsection (f); and

(B) in subsection (d)(1)—

(i) by inserting ", including the sources of lead exposure, the immediate risk of lead-based paints, other sources of lead including drinking water and soil, the potential dangers of lead exposure during home renovations, the importance of screening young children for lead, and the preventive steps that parents can take in reducing the risk for lead poisoning," after "infants and children" in subparagraph (B);

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph:

"(E) Assurances satisfactory to the Secretary that the program to be provided under the grant applied for will include educational programs designed to communicate to health professionals and paraprofessionals updated knowledge concerning lead poisoning and research, the health consequences, if any, of low-level lead burden, the prevalence of lead poisoning among all socioeconomic groupings, the benefits of expanded lead screening, and the therapeutic and other interventions available to prevent and combat lead poisoning in affected children and families.".

(2) REPORT.—Section 317A(d)(2), as redesignated by subsection (a)(2)(A), is amended to read as follows:

"(2) ANNUAL REPORT.—Not later than February 1 of each year, the Secretary shall submit to Congress, a report on the effectiveness during the preceding fiscal year of programs carried out with grants under subsection (a) and of any programs that are carried out by the Secretary pursuant to subsection (l)(2). Such reports shall, include in addition to any other information that the Secretary shall require a description of the number of individuals screened, age distribution of individuals screened, minority representation of the screened population, number of screening sites, percentage of children screened with blood levels greater than 10 micrograms per deciliter, and prior years information for these categories where available. Recipients of grants under this section that are required to report equivalent information to the Secretary under other sections of this Act shall be exempt from the requirements of this subsection.".

(3) TECHNICAL AND CONFORMING AMENDMENTS.—Section 317A(d)(1), as redesignated by subsection (a)(2)(A) and amended by subsection (c)(1)(B)(i), is further amended—

(A) by striking out "(d) GRANT" and all that follows through "No grant" and inserting the following:

"(d) GRANT APPLICATION.—

"(1) IN GENERAL.—No grant";

(B) by moving each of subparagraphs (A) through (F) 2 ems to the right; and

(C) in subparagraph (C), by striking out "effectiveness" and all that follows and inserting in lieu thereof "effectiveness.".

(d) ESTABLISHMENT OF PROVISION REGARDING RELATIONSHIP TO ITEMS AND SERVICES UNDER OTHER PROGRAMS.—Section 317A, as amended by subsection (c)(1)(A), is further amended by inserting after subsection (e) the following new subsection:

"(f) RELATIONSHIP TO SERVICES AND ACTIVITIES UNDER OTHER PROGRAMS.—

"(1) IN GENERAL.—A recipient of a grant under subsection (a) may not make payments from the grant for any service or activity to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service or activity—

"(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

"(B) by an entity that provides health services on a prepaid basis.

"(2) APPLICABILITY TO CERTAIN SECONDARY AGREEMENTS FOR PROVISION OF SERVICES.—Paragraph (1) shall not apply in the case of a provider through which a grantee under subsection (a) provides services under such subsection if the Secretary has provided a waiver under subsection (b)(2) regarding the provider.".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 317A(l), as redesignated by subsection (a)(2)(A), is further amended—

(1) by striking out "There are" and all that follows through "not more than" and inserting in lieu thereof the following: "For the purpose of carrying out this section, there are authorized to be appropriated";

(2) by striking "and" after "1990,"; and

(3) by inserting before the period the following: ", $40,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

(f) NATIONAL EDUCATION PROGRAM.—Title III is amended by inserting after section 317A (42 U.S.C. 247b-1) the following new section:

"SEC. 317B. NATIONAL LEAD POISONING PREVENTION EDUCATION PROGRAM.

"The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish and implement a national program designed to educate health professionals and paraprofessionals and the general public concerning lead poisoning. As part of such educational program the Secretary shall ensure that such individuals have access to information concerning the health effects of low-level lead toxicity, the most serious causes of lead poisoning, and the primary and secondary preventive measures that may be taken to combat the problem of lead poisoning.".

(g) RESEARCH AND DEVELOPMENT.—Title III (as amended by subsection (f) is further amended by inserting after section 317B the following new section:

"SEC. 317C. NATIONAL LEAD POISONING TECHNOLOGY ASSESSMENT AND EPIDEMIOLOGY PROGRAM.

"The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish and implement a concerted technology assessment and epidemiology program to—

"(1) develop improved testing measures that may be administered to children to detect lead toxicity using methods that are sufficiently reliable, sensitive, applicable and cost-effective;

"(2) more accurately assess the prevalence of lead poisoning by State, socioeconomic grouping, and health care insurance status; and

"(3) conduct any applied research necessary to improve the effectiveness of childhood lead poisoning prevention programs.".

(h) TASK FORCE TO COORDINATE EFFORTS TO PREVENT LEAD POISONING.—Title III (as amended by subsections (f) and (g) is further amended by inserting after section 317C the following new section:

"SEC. 317D. INTERAGENCY TASK FORCE ON THE PREVENTION OF LEAD POISONING.

"(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall establish a task force, to be known as the 'Interagency Task Force on the Prevention of Lead Poisoning', to coordinate the efforts of Federal agencies to prevent lead poisoning.

"(b) COMPOSITION.—The task force established under subsection (a) shall be composed of—

"(1) the Secretary, who shall serve as the chairperson of the task force;

"(2) the Secretary of Housing and Urban Development;

"(3) the Administrator of the Environmental Protection Agency; and

"(4) senior staff selected by the Secretary of Health and Human Services, Secretary of

Housing and Urban Development and Administrator of the Environmental Protection Agency.

"(c) DUTIES.—The task force established under subsection (a) shall—

"(1) review, evaluate and coordinate current strategies and plans formulated by the Department of Health and Human Services (including the Strategic Plan for the Elimination of Lead Poisoning of February 21, 1991), the Department of Housing and Urban Development (including the Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing of December 7, 1990) and the Environmental Protection Agency (including the Strategy for Reducing Lead Exposures of February 21, 1991) and develop a unified implementation plan for programs related to the prevention of lead poisoning that receive assistance from the Federal Government;

"(2) establish a mechanism for sharing and disseminating information among and to agencies participating in the task force;

"(3) identify the most promising areas of research and education concerning lead poisoning;

"(4) identify the practical and technological constraints to expanding lead poisoning prevention;

"(5) annually carry out a comprehensive review of Federal programs providing assistance to prevent lead poisoning, and prepare and submit not later than May 1 of each year to the Committee on Labor and Human Resources and the Committee on the Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report that summarizes the review conducted under this paragraph and contains any program, policy and budgetary recommendations of the task force; and

"(6) annually review and coordinate departmental and agency budgetary requests with respect to all lead poisoning prevention activities of the Federal Government.".

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect October 1, 1991, or upon the date of the enactment of this Act, whichever occurs later.

SEC. 136. SCREENING AND EARLY DETECTION OF PROSTATE CANCER.

Title III is amended by inserting after Section 318 (42 U.S.C. 247c) the following new section:

"SEC. 318A. PROSTATE CANCER SCREENING AND EARLY DETECTION.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States, academic medical centers, or other public or nonprofit private entities—

"(1) to determine the prevalence, incidence and mortality rates and stage at diagnosis of prostate cancer, nationally, within regions and within subgroups of the population; and

"(2) to determine the state of current practices for the screening and diagnosis of prostate cancer and the effectiveness of such practices in reducing mortality.

Such grants shall be awarded on the basis of an established competitive review process.

"(b) COORDINATION WITH THE NATIONAL INSTITUTES OF HEALTH.—The Director of the Centers of Disease Control and Prevention shall coordinate with the Director of the National Institutes of Health to—

"(1) evaluate existing methods for the screening and diagnosis of prostate cancer in order to develop more sensitive and specific, less expensive screening and diagnostic methods;

"(2) evaluate and improve reporting of surveillance data relative to prostate cancer;

"(3) disseminate information concerning such methods to health professionals; and

"(4) collaborate to expedite the review of research and development of technologies that insure early detection of prostate cancer.

"(c) APPLICATION REQUIREMENTS.—The Secretary may not make a grant under subsection (a) unless an application for such grant is submitted to the Secretary. Such application shall be in such form, submitted at such time, and contain such information as the Secretary determines to be appropriate to carry out this section, including a description of the activities, as described in subsection (a), that the applicant intends to use the amounts received under such grant to carry out.

"(d) DESCRIPTION OF INTENDED USE OF GRANTS.—The Secretary may not make a grant under subsection (a) unless the applicant for such grant submits to the Secretary a description of the purposes for which the applicant intends to expend the amounts received under the grant that—

"(1) identifies the populations, areas and locations to be assessed under the grant; and

"(2) provides assurances that the grant funds will be used in the most cost-effective manner practicable.

"(e) TECHNICAL ASSISTANCE.—The Secretary may provide training and technical assistance with respect to the planning, development and operation of activities carried out under grants awarded under this section.

"(f) REPORTS.—Not later than 18 months after the awarding of grants under this section, and annually thereafter, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce in the House of Representatives, a report that contains—

"(1) a summary of the findings derived from the activities carried out under grants awarded under this section during the preceding fiscal year; and

"(2) recommendations for administrative and legislative initiatives to improve the public health based upon the findings described in paragraph (1) that the Secretary determines to be appropriate.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

SEC. 137. SPECIAL REGIONAL AND NATIONAL DEMONSTRATION PROJECTS FOR MINORITY HEALTH PROMOTION AND DISEASE PREVENTION.

Title XVII (42 U.S.C. 300u) is amended by adding at the end thereof the following new section:

"SEC. 1708. SPECIAL REGIONAL AND NATIONAL DEMONSTRATION PROJECTS FOR MINORITY HEALTH PROMOTION AND DISEASE PREVENTION.

"(a) GRANTS.—The Secretary, acting through the Assistant Secretary of Health, shall award grants to States, political subdivisions of States, public or nonprofit community-based organizations, and other public and nonprofit private entities for the establishment of demonstration projects for the prevention of diseases that disproportionately affect minorities.

"(b) PRIORITY.—In awarding grants for projects under subsection (a), the Secretary shall give priority to projects that are designed to address the leading causes of death, disease and disability in minority populations, including cancer, cardiovascular disease, diabetes, violence, homicide, and tobacco use.

"(c) APPLICATION.—To be eligible to receive a grant under this section, an entity of the type described in subsection (a) shall prepare and submit to the Secretary an application, at such time, in such form, and containing such information as the Secretary determines appropriate.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

TITLE II—COORDINATION OF HEALTH PROMOTION AND DISEASE PREVENTION ACTIVITIES

SEC. 201. SHORT TITLE.

This title may be cited as the "Health Promotion and Disease Prevention Coordination Act of 1991".

SEC. 202. HEALTH INFORMATION AND HEALTH PROMOTION.

(a) OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION.—Paragraph (11) of section 1701(a) (42 U.S.C. 300u(a)(11)) is amended to read as follows:

"(11) establish in the Office of the Assistant Secretary for Health an Office of Disease Prevention and Health Promotion, to be headed by a director appointed by the Secretary, that shall—

"(A) ensure interagency and interdepartmental coordination of all activities related to health promotion and disease prevention, specifically including nutrition, physical fitness, children and school health, worksite health promotion, health promotion for special populations at risk for preventable disease and disability, and other matters that involve various agencies of the Department or collaboration with other Federal departments and agencies;

"(B) coordinate Federal activities of the type described in subparagraph (A) with similar activities conducted by the private sector and encourage the establishment of additional activities of this type in the private sector;

"(C) establish a national information clearinghouse to—

"(i) facilitate the exchange of information concerning matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care;

"(ii) facilitate the access of health care providers, other providers of health information, and health care consumers to such information; and

"(iii) facilitate and assist entities in the access of such information and the analysis of issues and problems relating to such matters;

"(D) support projects, conduct research, and disseminate information relating to health promotion, disease prevention, preventive medicine and physical fitness and exercise;

"(E) coordinate, in collaboration with agencies within the Department and other Federal Departments and agencies, a national effort to promote health and prevent disease through the enhancement of health related behavior, improve access to preventive health services, and health information, communication and education with respect to the appropriate use of health care; and

"(F) report to the public, through the publication of a short, easy-to-understand annual report on key Healthy People 2000 objective indicators and on progress made to-

ward achieving the Healthy People 2000 objectives, to—

"(i) focus attention on an easily identifiable and understandable set of core health objective indicators;

"(ii) highlight national, State, and individual health status indicators and cite specific examples;

"(iii) stress quality of life indicators;

"(iv) maximize the use of the print and electronic media to promote the health status of the United States and the Healthy People 2000 objectives;

"(v) highlight priority areas where additional efforts are needed, either at the national, State, or individual level, to attain specific Healthy People 2000 objectives; and

"(vi) report on the current ranking of the United States with respect to the infant mortality and life expectancy rates.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Subsection (b) of section 1701 (42 U.S.C. 300u(b)) is amended to read as follows—

"(b) For the purpose of carrying out this section and sections 1702 through 1705, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.".

(c) TARGET POPULATIONS.—Section 1701 (42 U.S.C. 300u) is amended by adding at the end thereof the following new subsection:

"(d) With respect to activities carried out with amounts appropriated under this title, particular emphasis shall be placed on the target populations under each grant, contract or other activity under this title to ensure that appropriate priority is provided to populations and groups with documented historically poor health.".

(d) LITERACY REQUIREMENTS.—Section 1701(a)(3) (42 U.S.C. 300u(a)(3)) is amended—

(1) in subparagraph (B), by striking out "and" at the end thereof;

(2) in subparagraph (C), by adding "and" after the semicolon; and

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

"(D) ensure that, after January 1, 1992, at least one-half of all new or revised health education and promotion materials developed or funded by the Department is in a form that does not exceed a level of functional literacy, as defined in the National Literacy Act of 1991 (Public Law 102-73);".

SEC. 203. INTERDEPARTMENTAL COORDINATING COUNCIL.

Section 1701 (42 U.S.C. 300u) (as amended by section 202(c)) is further amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary, in consultation with the Secretary of Education, shall establish an interdepartmental group for coordinating activities and fostering cooperation with respect to programs concerning multidimensional school health programs, including school health education. Multidimensional school health programs may include—

"(A) school health education;

"(B) school-linked or school based health services designed to prevent, detect and address health problems;

"(C) programs to create a healthy and safe school environment;

"(D) physical education;

"(E) healthful school food services;

"(F) psychological assessment and counseling to promote child development and emotional health;

"(G) schoolsite health promotion for faculty and staff; and

"(H) integrated school and community disease prevention and health promotion efforts.

"(2) The group established under paragraph (1) shall foster cooperation in linking national health objectives established by the Secretary with national education goals established by the Secretary of Education, and promote the establishment of multidimensional school health programs, particularly comprehensive school education, to improve the health of American youth.

"(3) The Secretary and the Secretary of Education, shall serve as co-chairpersons of the group established under paragraph (1). The Secretary shall appoint individuals to serve as a members of the group from among representatives of appropriate components of the Department of Health and Human Services and the Department of Education. The co-chairpersons may solicit appropriate representation from other Federal departments and agencies. The Public Health Service shall provide staff support for convening the group established under paragraph (1).".

SEC. 204. DISSEMINATION OF HEALTH INFORMATION.

(a) RESEARCH.—Section 1702(a) (42 U.S.C. 300u-1(a)) is amended—

(1) in the matter preceding paragraph (1), by striking out "health information and";

(2) striking out paragraph (2);

(3) redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively; and

(4) in paragraph (5) (as so redesignated), by striking out "paragraph (5)" and inserting in lieu thereof "paragraph (4)".

(b) INFORMATION.—Section 1704 (42 U.S.C. 300u-3) is amended by adding at the end thereof the following new paragraph:

"(6) A determination of the most effective methods of disseminating information concerning personal health behavior, preventive health services and the appropriate use of health care and of affecting behavior so that such information is applied to maintain and improve health, and prevent disease, reduce risk, or modify its course or severity.".

SEC. 205. REPORT ON NATIONAL HEALTH STATUS IMPROVEMENT.

Subsection (a) of section 1705 (42 U.S.C. 300u-4(a)) is amended to read as follows:

"(a) The Secretary shall annually prepare and submit to the President, for subsequent transmittal to the appropriate committees of Congress, a report concerning the status of the nation's health. Each such report shall include—

"(1) a description of the activities carried out under this title for the period for which the report is being submitted and the extent to which each such activity achieves the purpose of the title;

"(2) a description of the goals and strategy formulated pursuant to section 1701(a)(1), the model standards developed under this title, and the results of the study conducted under subsection (b) of this section;

"(3) an analysis of the manner in which the health status of the nation has changed since during the period for which the report is submitted, including information concerning the nation's health status according to the national health status indicators developed under section 5 of the Year 2000 National Health Objectives Planning Act (Public Law 101-582); and

"(4) such recommendations as the Secretary considers appropriate for legislation with respect to health promotion, disease prevention, health information, preventive health services, and education in the appropriate use of health care, including recommendations for revisions and extensions of this title.".

SEC. 206. HEALTH EDUCATION CURRICULUM.

Section 1707(b)(6) (42 U.S.C. 300u-6(b)(6)) is amended—

(1) by striking out "and" at the end of subparagraph (D);

(2) by adding "and" after the semicolon in subparagraph (E);

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

"(F) the development of model curricula and programs for health information and education for use in community and workplace settings.".

SEC. 207. STATE OFFICES OF MINORITY HEALTH.

Title XVII (42 U.S.C. 300u et seq.) is amended by adding at the end thereof the following new section:

"SEC. 1709. GRANTS TO STATES FOR OPERATION OF OFFICES OF MINORITY HEALTH.

"(a) IN GENERAL.—The Secretary, acting through the Deputy Assistant Secretary for Minority health (as established under section 1707), may make grants to States for the purpose of improving the health status in minority communities, through the operation of State offices of minority health established to monitor and facilitate the achievement of the Health Objectives for the Year 2000 as they affect minority populations.

"(b) CERTAIN REQUIREMENT FOR STATES.—

"(1) MINIMUM QUALIFICATIONS.—The Secretary may not make a grant to a State under subsection (a) unless such State receives, under any provision of this Act other than subsection (a), one or more grants, cooperative agreements, or contracts for the fiscal year for which the State is applying pursuant to subsection (g) to receive a grant under subsection (a).

"(2) ADMINISTRATION OF PROGRAM.—The Secretary may not make a grant to a State under subsection (a) unless such State agrees that the program carried out by the State with amounts received under the grant will be administered directly by a single State agency.

"(c) CERTAIN REQUIRED ACTIVITIES.—The Secretary may not make a grant to a State under subsection (a) unless such State agrees that activities carried out by an office operated under the grant received pursuant to such subsection will—

"(1) establish and maintain within the State a clearinghouse for collecting and disseminating information on—

"(A) minority health care issues;

"(B) research findings relating to minority health care; and

"(C) innovative approaches to the delivery of health care and social services in minority communities;

"(2) coordinate the activities carried out in the State that relate to minority health care, including providing coordination for the purpose of avoiding redundancy in such activities; and

"(3) identify Federal and State programs regarding minority health, and providing technical assistance to public and non-profit entities regarding participation in such program.

"(d) REQUIREMENT REGARDING ANNUAL BUDGET FOR OFFICE.—The Secretary may not make a grant to a State under subsection (a) unless such State agrees that, for any fiscal year for which the State receives such a grant, the office operated under such grant will be provided with an annual budget of not less than $50,000.

"(e) CERTAIN USES OF FUNDS.—

"(1) RESTRICTIONS.—The Secretary may not make a grant to a State under subsection (a) unless such State agrees that—

"(A) if research with respect to minority health is conducted pursuant to the grant, not more than 10 percent of the amount receive under the grant will be expended for such research; and

"(B) amounts provided under the grant will not be expended—

"(i) to provide health care (including providing cash payments regarding such care);

"(ii) to conduct activities for which Federal funds are expended—

"(I) within the state to provide technical and other non-financial assistance under subsection (m) of section 340A;

"(II) under a memorandum of agreement entered into with the State under subsection (h) of such section;

"(III) under a grant under section 388I;

"(iii) to purchase medical equipment, to purchase ambulances, aircraft, or other vehicles, or to purchase major communications equipment;

"(iv) to purchase or improve real property; or

"(v) to carry out any activity regarding a certificate of need.

"(2) AUTHORITIES.—Activities for which a State may expend amounts received under a grant under subsection (a) include—

"(A) paying the costs of establishing an office of minority health for purposes of subsection (a);

"(B) subject to paragraph (1)(B)(ii)(III), paying the costs of any activity carried out with respect to recruiting and retaining health professionals to serve in minority communities in the State; and

"(C) providing grants and contracts to public and non-profit private entities to carry out activities authorized in this section.

"(f) REPORTS.—The Secretary may not make a grant to a State under subsection (a) unless such State agrees—

"(1) to submit to the Secretary reports containing such information as the Secretary may require regarding activities carried out under this section by the State; and

"(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

"(g) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant to a State under subsection (a) unless an application for the grant is submitted to the Secretary and the application in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

"(h) NONCOMPLIANCE.—The Secretary may not make payments under subsection (a) to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

"(i) DEFINITIONS.—For purposes of making grants under subsection (a) there are authorized to be appropriated $3,000,000 for fiscal year 1992, $4,000,000 for fiscal year 1993, $3,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996.

"(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available until expended.

"(k) TERMINATION OF PROGRAM.—No grant may be made under this section after the aggregate amounts appropriated under subsection (j)(1) are equal to $10,000,000.".

TITLE III—PREVENTABLE CASES OF INFERTILITY

SEC. 301. ESTABLISHMENT OF PROGRAM OF GRANTS REGARDING PREVENTABLE CASES OF INFERTILITY ARISING AS RESULT OF SEXUALLY TRANSMITTED DISEASES.

Title III (42 U.S.C. 241 et seq.) (as amended by sections 133 and 302), is further amended by adding at the end the following new part:

"PART O—PREVENTABLE CASES OF INFERTILITY

"SEC. 399N. INFERTILITY ARISING AS RESULT OF SEXUALLY TRANSMITTED DISEASES.

"(a) GRANTS.—The Secretary may make grants to States, political subdivisions of States, and any other public or nonprofit private entities for the purpose of carrying out the activities described in subsection (c) regarding any treatable sexually transmitted disease that can cause infertility in women if treatment is not received for the disease. The Secretary shall carry out this section acting through the Director of the Centers for Disease Control and Prevention.

"(b) SPECIFICATION OF RELEVANT DISEASES.—

"(1) IN GENERAL.—For each fiscal year, the Secretary shall make a determination specifying all sexually transmitted diseases that are diseases described in subsection (a).

"(2) DISEASES APPLICABLE WITH RESPECT TO GRANTEE INVOLVED.—In making a grant under subsection (a) to an applicant for the grant, the Secretary shall make a determination in order to select, from among the diseases specified for purposes of paragraph (1) for the fiscal year involved, the particular diseases with respect to which the grant is to be made to the applicant. The Secretary may select, for purposes of the determination, any or all of the diseases so specified. The Secretary may not make such a grant unless the applicant agrees to carry out this section only with respect to the disease or diseases selected for the applicant through the determination.

"(c) AUTHORIZED ACTIVITIES.—With respect to any sexually transmitted disease described in subsection (a), the activities referred to in such subsection are—

"(1) providing counseling to women on the prevention and control of the disease, including, in the case of a woman with the disease, counseling on the benefits of locating and providing such counseling to any individual from whom the woman may have contracted the disease and any individual whom the woman may have exposed to the disease;

"(2) screening women for the disease and for secondary conditions resulting from the disease;

"(3) providing treatment to women for the disease;

"(4) providing for the provision of necessary medical services to women screened pursuant to paragraph (2), and referrals for evaluation and treatment regarding acquired immune deficiency syndrome and other sexually transmitted diseases;

"(5) providing follow-up services to determine the outcomes of medical services;

"(6) in the case of any woman receiving services pursuant to any of paragraphs (1) through (5), providing to the partner of the woman the services described in such paragraphs, as appropriate;

"(7) providing outreach services to inform women of the fact that the services described in paragraphs (1) through (6) are available from the grantee involved;

"(8) providing to the public information and education on the prevention and control of the disease, including disseminating such information;

"(9) providing training to health care providers in carrying out the counseling and screenings described in paragraphs (1) and (2);

"(10) in the case of services and activities described in this subsection, coordinating the services and activities in accordance with subsection (g); and

"(11) collecting, in accordance with subsection (k), data on the incidence and prevalence of the disease in order to assist in carrying out activities for the prevention and control of the disease, including activities to educate the public regarding the disease.

"(d) REQUIREMENT OF AVAILABILITY OF ALL SERVICES THROUGH EACH GRANTEE.—The Secretary may not make a grant under subsection (a) unless the applicant involved agrees that each authorized service will be available through the applicant. With respect to compliance with such agreement, the applicant may expend the grant to provide any of the services directly, and may expend the grant to enter into agreements with other public or nonprofit private entities under which the entities provide the services.

"(e) REQUIRED PROVIDERS REGARDING CERTAIN SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant involved agrees that, in expending the grant to provide authorized services, the services described in paragraphs (1) through (7) of subsection (c) will be provided only through entities that are State or local health departments, grantees under section 329, 330, or 1001 or are other public or nonprofit private entities that provide health services to a significant number of low-income women.

"(f) QUALITY ASSURANCE REGARDING SCREENING FOR DISEASES.—For purposes of this section, the Secretary shall establish criteria for ensuring the quality of screening procedures for diseases described in subsection (a). The Secretary may not make a grant under such subsection unless the applicant involved agrees, with respect to any disease selected in the determination made under subsection (b)(2) for the applicant, to carry out screenings for the disease in accordance with such criteria.

"(g) COORDINATION OF SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant involved agrees to coordinate all authorized services provided through the applicant for the purpose of ensuring efficiency in the provision of the services.

"(h) CONFIDENTIALITY.—The Secretary may not make a grant under subsection (a) unless the applicant involved agrees to maintain the confidentiality of information on individuals regarding screenings of the individuals for sexually transmitted diseases, subject to complying with applicable law.

"(i) LIMITATION ON IMPOSITION OF FEES FOR SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

"(1) will be made according to a schedule of charges that is made available to the public;

"(2) will be adjusted to reflect the income of the individual involved; and

"(3) will not be imposed on any individual with an income of less than 150 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in

accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"(j) LIMITATIONS ON CERTAIN EXPENDITURES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that—

"(1) in the case of the first fiscal year for which the applicant receives payments under the grant, not more than 20 percent of the grant will be expended for the purpose of carrying out paragraphs (8) through (11) and subsection (c); and

"(2) in the case of any subsequent fiscal year for which the applicant receives payments under any grant under subsection (a), not more than 15 percent of the grant will be expended for such purpose.

"(k) REPORTS TO SECRETARY.—

"(1) COLLECTION OF DATA.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to any disease selected in the determination made under subsection (b)(2) for the applicant, to submit to the Secretary, for each fiscal year for which the applicant receives such a grant, a report providing—

"(A) the incidence of the disease among the population of individuals served by the applicant;

"(B) the number and demographic characteristics of individuals in such population;

"(C) the types of interventions and treatments provided by the applicant, and the health conditions with respect to which referrals have been made pursuant to subsection (c)(4);

"(D) an estimate by the applicant of the effect of the services provided under the grant on the community in which the services have been provided; and

"(E) providing such other information as is available to the applicant and determined by the Secretary to be relevant regarding the prevention and control of the disease.

"(2) UTILITY AND COMPARABILITY OF DATA.—The Secretary shall carry out activities for the purpose of ensuring the utility and comparability of data collected pursuant to paragraph (1). The Secretary may not make a grant under subsection (a) unless the applicant involved makes such agreements as the Secretary determines to be necessary for such purpose.

"(l) MAINTENANCE OF EFFORT.—

"(1) IN GENERAL.—With respect to activities for which a grant under subsection (a) is authorized to be expended, the Secretary may not, subject to paragraph (2), make such a grant for any fiscal year unless the applicant agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the first fiscal year for which the entity receives such a grant.

"(2) APPLICABILITY TO PRIVATE ENTITIES.—In the case of a nonprofit private entity making an agreement under paragraph (1), the Secretary may require the entity to comply with the agreement only to the extent of the amount of non-Federal amounts that are available to the entity for the activities to which the agreement applies.

"(m) SUBMISSION OF PLAN FOR PROGRAM OF GRANTEE.—

"(1) IN GENERAL.—The Secretary may not make a grant under subsection (a) unless the applicant involved submits to the Secretary a plan describing the manner in which the applicant will comply with the agreements required as a condition of receiving such a grant, including a specification of the entities through which authorized services will be provided and a specification of the manner in which such services will be coordinated for purposes of subsection (g).

"(2) PARTICIPATION OF CERTAIN ENTITIES.—The Secretary may not make a grant under subsection (a) unless the applicant provides assurances satisfactory to the Secretary that the plan submitted under paragraph (1) has been prepared in consultation with an appropriate number and variety of—

"(A) representatives of entities in the geographic area involved that provide services for the prevention and control of sexually transmitted diseases, including programs to provide to the public information and education regarding such diseases; and

"(B) representatives of entities in such area that provide family planning services.

"(n) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless an application for the grant is submitted to the Secretary, the application contains the plan required in subsection (m), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(o) DURATION OF GRANT.—The period during which payments are made to an entity from a grant under subsection (a) may not exceed 3 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments in such year. The preceding sentence may not be construed to establish a limitation on the number of grants under such subsection that may be made to an entity.

"(p) TECHNICAL ASSISTANCE, AND SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) TECHNICAL ASSISTANCE.—The Secretary may provide training and technical assistance to grantees under subsection (a) with respect to the planning, development, and operation of any program or service carried out under such subsection. The Secretary may provide such technical assistance directly or through grants or contracts.

"(2) SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(A) Upon the request of a grantee under subsection (a), the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the grantee in carrying out such subsection and, for such purpose, may detail to the grantee any officer or employee of the Department of Health and Human Services.

"(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of the grant to the grantee involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"(q) EVALUATIONS AND REPORTS BY SECRETARY.—

"(1) EVALUATIONS.—The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to subsection (a) in order to determine the quality and effectiveness of the programs.

"(2) REPORT TO CONGRESS.—Not later than 1 year after the date on which amounts are first appropriated pursuant to subsection (t), and annually thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report—

"(A) summarizing the information provided to the Secretary in reports made pursuant to subsection (k), including information on the incidence of sexually transmitted diseases described in subsection (a); and

"(B) summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year.

"(r) COORDINATION OF FEDERAL PROGRAMS.—The Secretary shall coordinate the activities carried out under the program established in this section with any similar activities regarding sexually transmitted diseases that are carried out under other programs administered by the Secretary, including the coordination of such activities of the Director of the Centers for Disease Control and Prevention with such activities of the Director of the National Institutes of Health.

"(s) DEFINITIONS.—For purposes of this section, the term 'authorized service' means any service or activity described in subsection (c).

"(t) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, other than subsections (q) and (u), there are authorized to be appropriated $50,000,000 for each of the fiscal years 1992 through 1996.

"(u) SEPARATE GRANTS FOR RESEARCH ON DELIVERY OF SERVICES.—

"(1) IN GENERAL.—The Secretary may make grants for the purpose of conducting research on the manner in which the delivery of services under subsection (a) may be improved. The Secretary may make such grants only to grantees under such subsection and to public and nonprofit private entities that are carrying out projects substantially similar to projects carried out under such subsection.

"(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996.".

TITLE IV—COMPREHENSIVE MATERNAL AND EARLY CHILDHOOD HEALTH CARE

SEC. 401. SHORT TITLE.

This title may be cited as the "Comprehensive Maternal and Early Childhood Health Care Act".

SEC. 402. MIGRANT AND COMMUNITY HEALTH CENTER INITIATIVES.

(a) MIGRANT HEALTH CENTERS.—Paragraph (2) of subsection (h) of section 329 (42 U.S.C. 254b(g)) is amended to read as follows:

"(2)(A) For purposes of subparagraph (B), from the amounts appropriated in each fiscal year under paragraph (1)(A), that are in excess of the amounts necessary to maintain the level of services provided with amounts appropriated under such paragraph in the year preceding the year for which such amounts are appropriated, the Secretary shall utilize, in each of the fiscal years 1992 through 1994, such sums as may be necessary in each such fiscal year for the development and operation of new Comprehensive Perinatal and Early Childhood Health Programs in medically underserved areas where such programs do not exist, and expand the capacity of services provided for pregnant women and children up to the age of three, in medically underserved areas where Migrant Health Centers are currently operating Comprehensive Perinatal Care Programs. The Secretary shall utilize such amounts to supplement and not supplant amounts expended on the date of enactment of this paragraph for Comprehensive Perinatal Care Programs under this section.

"(B) The Secretary shall make grants to Migrant Health Centers to assist such Centers in the development and operation of Comprehensive Perinatal and Early Childhood Health Programs. Such Programs shall be designed to provide coordinated health care and support services to pregnant women and young children to increase positive birth outcomes, reduce infant mortality, and support healthy child development. Such services shall include—

"(i) public information, outreach and case finding services provided through the use of media, community canvassing (using volunteer and paraprofessional personnel), referrals, or other methods targeted to reach women at high-risk of receiving inadequate health care;

"(ii) individualized risk assessment and case management services for pregnant women, infants, and children to ensure early, continuous, and comprehensive health care and support services including—

"(I) health care (including prenatal health care, nutrition counseling, and smoking cessation interventions), and health education concerning the risks of smoking, alcohol, substance abuse, and inadequate nutrition; and

"(II) perinatal care, primary and preventive health care for infants and children (including screening for vision, hearing, dental conditions, developmental delay, nutritional status, and lead poisoning), timely provision of immunizations, and referral for specialized early periodic screening diagnostic treatment services, services under part H of the Individuals with Disabilities Education Act, and other necessary health and support services;

"(iii) substance abuse screening, outpatient substance abuse counseling services, and referral to and as necessary for the purchase of community-based residential substance abuse treatment services for women with substance abuse problems;

"(iv) parenting skill training and child development education (including services stressing the importance of regular health screenings, adequate nutrition, child safety measures and basic growth patterns and expectations) through both center based counseling and through distribution of the Maternal Child Health Handbooks as available;

"(v) necessary support services, including counseling, child care, transportation, translation services, benefit eligibility determination, and housing assistance, either provided directly or through referral with appropriate follow-up; and

"(vi) collaboration with other community-based health and support service providers, hospitals, clinics, recipients of grants under title V of the Social Security Act, State and local health and social service departments, alcohol and drug treatment programs, State and local special supplemental food programs for women, infants and children under section 17 of the Child Nutrition Act of 1966, Medicaid offices, and other organizations providing services to women, infants, children, and families.

"(C) To the maximum extent practicable, comprehensive health and support services under this paragraph should be delivered on site at the health center (including services delivered by outposted Medicaid workers in accordance with section 1902 of the Social Security Act (42 U.S.C. 1396a), by workers eligible to provide services under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), by drug treatment service providers and through others) to ensure access and coordination.".

(b) COMMUNITY HEALTH CENTERS.—Subsection (g) of section 330 (42 U.S.C. 254c(g)) is amended:

(1) in paragraph (1) by adding at the end thereof the following new subparagraph:

"(C) Of the amounts appropriated under subparagraph (A), that are in excess of the amounts necessary to maintain the level of services provided with amounts appropriated under such subparagraph in the year preceding the year for which such amounts are appropriated, the Secretary shall utilize, in each of the fiscal years 1992 through 1994, such sums as may be necessary in each such fiscal year to make grants under subsections (c) and (d) for the planning and development of health centers to serve medically underserved populations. New community health centers shall be equitably distributed between underserved urban and rural areas with satellite models used where appropriate."; and

(2) in paragraph (2) to read as follows:

"(2)(A) For purposes of subparagraph (B), from the amounts appropriated in each fiscal year under paragraph (1)(A), that are in excess of the amounts necessary to maintain the level of services provided with amounts appropriated under such paragraph in the year preceding the year for which such amounts are appropriated, the Secretary shall utilize, in each of the fiscal years 1992 through 1994, such sums as may be necessary in each such fiscal year for—

"(i) the development and operation of new Comprehensive Perinatal and Early Childhood Health Programs in medically underserved areas where such programs do not exist; and

"(ii) expanding the capacity of services provided for pregnant women and children up to the age of three, in medically underserved areas where community health centers are currently operating Comprehensive Perinatal Care Programs in areas with high infant mortality.

The Secretary shall utilize such amounts to supplement and not supplant amounts expended on the date of enactment of this paragraph for Comprehensive Perinatal Care Programs under this section.

"(B) The Secretary shall make grants to Community Health Centers to assist such Centers in the development and operation of Comprehensive Perinatal and Early Childhood Health Programs. Such programs shall be designed to provide coordinated health care and support services to pregnant women and young children to increase positive birth outcomes, reduce infant mortality, and support healthy child development. Such services shall include—

"(i) public information, outreach and case finding services provided through the use of media, community canvassing (using volunteer and paraprofessional personnel), referrals, or other methods targeted to reach women at high-risk of receiving inadequate health care;

"(ii) individualized risk assessment and case management services for pregnant women, infants, and children to ensure early, continuous, and comprehensive health care and support services including—

"(I) health care (including prenatal health care, nutrition counseling, and smoking cessation interventions), and health education concerning the risks of smoking, alcohol, substance abuse, and inadequate nutrition; and

"(II) perinatal care, primary and preventive health care for infants and children (including screening for vision, hearing, dental conditions, developmental delay, nutritional status, and lead poisoning), timely provision of immunizations, and referral for specialized early periodic screening diagnostic treatment services, services under part H of the Individuals with Disabilities Education Act, and other necessary health and support services;

"(iii) substance abuse screening, outpatient substance abuse counseling services, and referral to and as necessary the purchase of community-based residential substance abuse treatment services for women with substance abuse problems;

"(iv) parenting skill training and child development education (including services stressing the importance of regular health screenings, adequate nutrition, child safety measures and basic growth patterns and expectations) through both center-based counseling and through distribution of the Maternal Child Health Handbooks as available;

"(v) necessary support services, including counseling, child care, transportation, translation services, benefit eligibility determination, and housing assistance, either provided directly or through referral with appropriate follow-up; and

"(vi) collaboration with other community-based health and support service providers, hospitals, clinics, recipients of grants under title V of the Social Security Act, State and local health and social service departments, alcohol and drug treatment programs, State and local special supplemental food programs for women, infants and children under section 17 of the Child Nutrition Act of 1966, Medicaid offices, and other organizations providing services to women, infants, children, and families.

"(C) To the maximum extent practicable, comprehensive health and support services under this paragraph should be delivered on site at the health center, (including services delivered by outposted Medicaid workers in accordance with section 1902 of the Social Security Act (42 U.S.C. 1396a), by workers eligible to provide services under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), by drug treatment service providers and by others) to ensure access and coordination.".

(c) PROGRAMS FOR THE BENEFIT OF HOMELESS INDIVIDUALS.—Subsection (q) of section 340 (42 U.S.C. 256(q)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) For purposes of subparagraph (B), from the amounts appropriated in each fiscal year under paragraph (1)(A), that are in excess of the amounts necessary to maintain the level of services provided with amounts appropriated under such paragraph in the year preceding the year for which such amounts are appropriated, the Secretary shall utilize, in each of the fiscal years 1992 through 1994, such sums as may be necessary in each such fiscal year for—

"(i) the development and operation of new Comprehensive Perinatal and Early Childhood Health Programs in medically underserved areas where such programs do not exist; and

"(ii) expanding the capacity of services provided for pregnant women and children up to the age of three, in medically underserved areas where grantees under this section are currently operating Comprehensive Perinatal Care Programs.

The Secretary shall utilize such amounts to supplement and not supplant amounts expended on the date of enactment of this paragraph for Comprehensive Perinatal Care Programs under this section.

"(B) The Secretary shall make grants to grantees under this section to assist such

grantees in the development and operation of Comprehensive Perinatal and Early Childhood Health Programs. Such Programs shall be designed to provide coordinated health care and support services to pregnant women and young children to increase positive birth outcomes, reduce infant mortality, and support healthy child development. Such services should include—

"(i) public information, outreach and case finding services provided through the use of media, community canvassing (using volunteer and paraprofessional personnel), referrals, or other methods targeted to reach women at high-risk of receiving inadequate health care;

"(ii) individualized risk assessment and case management services for pregnant women, infants, and children to ensure early, continuous, and comprehensive health care and support services including—

"(I) health care (including prenatal health care, nutrition counseling, and smoking cessation interventions), and health education concerning the risks of smoking, alcohol, substance abuse, and inadequate nutrition; and

"(II) perinatal care, primary and preventive health care for infants and children (including screening for vision, hearing, dental conditions, developmental delay, nutritional status, and lead poisoning), timely provision of immunizations, and referral for specialized early periodic screening diagnostic treatment services, services under part H of the Individuals with Disabilities Education Act, and other necessary health and support services;

"(iii) substance abuse screening, outpatient substance abuse counseling services, and referral to and as necessary the purchase of community-based residential substance abuse treatment services for women with substance abuse problems;

"(iv) parenting skill training and child development education (including services stressing the importance of regular health screenings, adequate nutrition, child safety measures and basic growth patterns and expectations) through both center-based counseling and through distribution of the Maternal Child Health Handbooks as available;

"(v) necessary support services, including counseling, child care, transportation, translation services, benefit eligibility determination, and housing assistance, either provided directly or through referral with appropriate follow-up; and

"(vi) collaboration with other community-based health and support service providers, hospitals, clinics, recipients of grants under title V of the Social Security Act, State and local health and social service departments, alcohol and drug treatment programs, State and local special supplemental food programs for women, infants and children under section 17 of the Child Nutrition Act of 1966, Medicaid offices, and other organizations providing services to women, infants, children, and families.

"(C) To the maximum extent practicable, comprehensive health and support services under this paragraph should be delivered on site at a health center, (including services delivered by outposted Medicaid workers in accordance with section 1902 of the Social Security Act (42 U.S.C. 1396a), by workers eligible to provide services under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), by drug treatment service providers and by others) to ensure access and coordination.".

SEC. 403. EXPANSION OF IMMUNIZATION PROGRAMS FOR YOUNG CHILDREN.

(a) VACCINE BULK PURCHASE PROGRAM.—Part B of title III (as amended by section 134) is further amended by adding after section 317D the following new section:

"SEC. 317E. VACCINE BULK PURCHASE PROGRAM.

"(a) IN GENERAL.—The Secretary acting through the Director of the Centers for Disease Control and in accordance with the preventative health grant provisions of subsections (a) and (j)(1)(B) of section 317, shall provide to the health department of each State or large city that is operating an immunization project, vaccines for immunization purposes.

"(b) DISTRIBUTION.—Vaccines provided to grantees with existing immunization projects under subsection (a) shall be made available for distribution and immunization services through the public health departments of such States or cities, recipients of grants under section 329, 330, and 340 in the State or city, Federally qualified health centers under section 1905(l)(2)(B) of the Social Security Act operating in the State or city, and public health professionals.

"(c) QUANTITY.—In determining the quantity of vaccine that is needed by a grantee under subsection (a), the Administrator of the Health Resources and Services Administration shall make available to the Director of the Centers for Disease Control data from annual reports submitted by recipients of grants under section 329, 330, and 340 and from entities certified as Federally qualified health centers under section 1905(l)(2)(B) of the Social Security Act. The Director of such Centers shall direct the health department of the State, county or city to equitably allocate vaccines made available under the bulk purchase program among those recipients described in subsection (b) who are providing immunization services to children, except that the amounts received by each provider on the date of enactment of this section shall not be diminished relative to the population served, and that grantees shall receive not less than the amount such grantees received under their bulk vaccine allotment as of January 1, 1991.

"(d) MAINTENANCE OF SUPPLY.—The provisions of this section shall be effective only to the extent to which the Secretary, acting through the Director of the Centers for Disease Control, provides assurances that the implementation of this section will not result in a reduction in the supply of vaccines available to grantees receiving vaccine allotments under the bulk purchasing programs as of January 1, 1991.".

(b) IMMUNIZATION DEMONSTRATION PROJECTS FOR OUTREACH PROGRAMS.—Subsection (b) of section 2 of the Vaccine and Immunization Amendments of 1990 (Public Law 101-502) is amended to read as follows:

"(b) DEMONSTRATION PROJECTS FOR OUTREACH PROGRAMS.—

"(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, may make grants to States for the purpose of carrying out demonstration projects—

"(A) to provide, without administrative charge, immunizations for vaccine preventable diseases to children not more than 2 years of age who reside in communities whose population includes a significant number of low income individuals, increasing the capacity of public health departments to deliver vaccines and facilitating outreach activities to improve the percentage of fully immunized children;

"(B) to expand the capacity of public health departments, recipients of grants under sections 329, 330, and 340 of the Public Health Service Act, and other health provider entities that are co-located with centers providing services under section 17 of the Child Nutrition Act of 1966 in order to provide immunizations to participants in the program established under such section 17 during regular hours, and to enable State health departments working through State directors of the program established under such section 17 to make available to such centers vaccines and adequate funds to administer immunizations; and

"(C) to maintain private provider participation in the provision of immunization services and to encourage private physicians to provide such services to infants and children enrolled for benefits under title XIX of the Social Security Act.

"(2) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out paragraph (1), there are authorized to be appropriated $25,000,000 in fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.".

SEC. 404. PROJECT GRANTS FOR MATERNAL AND CHILD PREVENTIVE HEALTH AND HEALTH CARE SERVICES.

Section 314 (42 U.S.C. 246) is amended by adding at the end thereof the following new subsection:

"(g)(1) The Secretary is authorized to award grants to eligible entities for the development and operation of Comprehensive Perinatal and Early Childhood Health Programs, to provide coordinated health care and support services to pregnant women and young children to increase positive birth outcomes, reduce infant mortality, and support healthy child development.

"(2)(A) To be eligible to receive a grant under this subsection, an entity shall be a public health department or public or private nonprofit health entity that—

"(i) does not receive assistance under section 329 or 330;

"(ii) is located in a medically underserved or health professional shortage area not served by an entity receiving funds under section 329 or 330; and

"(iii) has demonstrated a commitment to serving low income and uninsured individuals and families.

"(B) Notwithstanding subparagraph (A), entities located in areas served by grantees under section 329 or 330 may apply for and receive a grant under this subsection, if such 329 or 330 grantees do not intend to apply for expanded funding for prenatal and early childhood health care services, and if such entities can demonstrate that—

"(i) the women and children to be served, or the services to be provided, using funds provided under the grant are in addition to those populations served and services offered by such existing section 329 or 330 grantees; and

"(ii) the entity will not use funds provided under this subsection to supplant State expenditures.

"(3) Services to be provided with funds under a grant awarded under this subsection shall be delivered in a culturally sensitive manner and made accessible to the population to be served. Such services shall include—

"(A) public information, outreach, or case finding services provided through the use of media, community canvassing (including the use of volunteer and paraprofessional personnel), referrals, or other methods targeted to reach women at high-risk of receiving inadequate health care;

"(B) individualized risk assessment and case management services for pregnant

women, infants, and children to ensure early, continuous, and comprehensive health care and support services including—

"(i) health care (including prenatal health care, nutrition counseling, and smoking cessation interventions), and health education concerning the risks of smoking, alcohol, substance abuse, and inadequate nutrition; and

"(ii) perinatal care, primary and preventive health care for infants and children (including screening for vision, hearing, dental conditions, developmental delay, nutritional status, and lead poisoning), timely immunizations, and referral for specialized early periodic screening diagnostic treatment services, services under part H of the Individuals with Disabilities Education Act, and other necessary health and support services;

"(C) collaboration with other community-based health and support service providers, hospitals, clinics, recipients of grants under title V of the Social Security Act, State and local health and social service departments, alcohol and drug treatment programs, State and local special supplemental food programs for women, infants and children under section 17 of the Child Nutrition Act of 1966, Medicaid offices, and other organizations providing services to women, infants, children and families;

"(D) substance abuse screening, outpatient substance abuse counseling services, or referral to substance abuse treatment services for women with substance abuse problems;

"(E) necessary support services, including counseling, child care, transportation, translation services, benefit eligibility determination, and housing assistance, either provided directly or through referral with appropriate follow-up; and

"(F) parenting skill training and child development education (including services stressing the importance of regular health screenings, adequate nutrition, child safety measures and basic growth patterns and expectations) through both counseling provided directly by the grantee, and through distribution of the Maternal Child Health Handbooks as available.

Services described in subparagraphs (D), (E) and (F) shall be provided by grantees under this subsection to the maximum extent practicable.

"(4) To the maximum extent practicable, services provided under this subsection shall be delivered in a single location by the grantee, except that such may include multiple sites if mobile health care provider units are utilized (including services delivered by outposted Medicaid workers in accordance with section 1902 of the Social Security Act, by workers eligible to provide services under section 17 of the Child Nutrition Act of 1966, by drug treatment service providers, and by others) to ensure access and coordination.

"(5) The Secretary may not award a grant under this subsection unless—

"(A) the applicant for the grant has entered into, or will enter into, a participation agreement within 180 days of the date of the grant award with the State agency administering funds under title XIX of the Social Security Act and is qualified to receive such payments for services provided;

"(B) the applicant for the grant has prepared a schedule of fees or payments for the provision of services under paragraph (3) consistent with locally prevailing rates or charges, and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, such discounts to be adjusted on the basis of the patient's ability to pay;

"(C) the applicant for the grant provides assurances that every reasonable effort will be made to secure from patients and third party reimbursement entities, including any State compensation program, health insurance entity, any entity providing health services on a prepaid basis, or any Federal or State health benefits program, full payment for the services provided under paragraph (3).

Amounts awarded under this subsection shall be used as the payment source of last resort for services provided.

"(6) In addition to providing the services required under paragraph (3), a grantee may use amounts provided under the grant for minor remodeling and rehabilitation of the facilities needed to support the delivery of such services. No funds may be used for the construction of new buildings or the acquisition of properties.

"(7) A grantee shall not use in excess of 5 percent of the amounts received under a grant awarded under this subsection for administration, accounting, reporting and program oversight functions.

"(8) To be eligible to receive a grant under this subsection, an entity, in addition to meeting the requirements of paragraph (2), shall prepare and submit to the Secretary an application at such time, in such form, and containing such information as the Secretary shall require, including assurances adequate to ensure—

"(A) that funds received under a grant awarded under this subsection will be utilized to supplement not supplant State funds made available to the entity for the provision of maternal and child health and social services, with identification of funding received from other sources for such purposes;

"(B) that prenatal and early childhood health care will be provided under a case management model, that continuity of care will be provided for all individuals, and that services to be provided are accessible to the target population to be served;

"(C) that the entity will serve low income women and children in the service delivery area, and have a plan for outreach to those at risk of inadequate health care services;

"(D) that the entity has outlined a needs assessment of the health care delivery system in the service delivery area, to include health status indicators for women of childbearing age and young children, and identification of other health care provider groups in the area;

"(E) that the entity has reviewed the application for a grant under this section with the State agency administering amounts received under title V of the Social Security Act and the local health department, and that such application is consistent with the State plan for the delivery of maternal and child health services; and

"(F) that the entity will submit a report to the Secretary and to the State and relevant local health departments that will include demographic data on the number of individuals served and those services provided with funds provided under this subsection, and a description of the manner in which services provided by the entity are integrated with those services provided by other health care agencies or provider groups in the service delivery area.

"(9) In awarding grants under this subsection, the Secretary should give priority to—

"(A) those applications submitted by entities that are an association of one or more public, and one or more nonprofit private health care and social service providers, except that in areas where such an association would not be possible as a result of the absence of more than one provider entity, no such priority shall be given; and

"(B) those applications providing evidence of local investment (such as State, health care provider, local charity, and volunteer organization contributions) in maternal and child health initiatives, through a 10 percent local contribution to match Federal funds, in cash or in kind, fairly evaluated, not including any portion of any service subsidized by the Federal Government or other copayments under paragraph (5).

Grants under this subsection shall be awarded on an equitable basis among eligible rural and urban applicants.

"(10) Not later than 30 months after the date of enactment of this subsection, the Secretary shall prepare and submit, to the Senate Committee on Labor and Human Resources, the Senate Finance Committee, and the House Committee on Energy and Commerce, an evaluation of the program established under this subsection, that shall include—

"(A) an analysis of the manner in which funds provided under this subsection have been used by grantees, with a review of the services provided;

"(B) the infant mortality rates and immunization rates in the communities served by grantees prior to the receipt of such a grant and at the time such evaluation is prepared, and an assessment of the impact of enhanced services on such rates;

"(C) an analysis of the manner in which entities receiving grants under this subsection have integrated the services provided under such grants with other available health and social service providers in the service delivery area; and

"(D) recommendations concerning any modifications necessary to improve program effectiveness in reaching the stated goals of the program in a cost-effective manner.

"(11) There are authorized to be appropriated for each of the fiscal years 1992 through 1994, such sums as may be necessary to carry out this subsection.".

SEC. 405. BIRTH DEFECTS PROPOSAL.

Part B of title III (42 U.S.C. 243 et seq.) (as amended by section 403) is further amended by inserting after section 317E, the following new section:

"SEC. 317F. COORDINATION OF BIRTH DEFECTS SURVEILLANCE AND EPIDEMIOLOGY RESEARCH PROGRAMS.

"(a) FINDINGS.—Congress finds that—

"(1) birth defects are the leading cause of infant mortality, directly responsible for one out every five infant deaths;

"(2) thousands of the 250,000 infants born with a birth defect annually face a lifetime of chronic disability and illness; and

"(3) there is no national effort to record birth defect data and perform epidemiologic surveillance even though such data would aid research efforts to understand and reduce the incidence of preventable birth defects.

"(b) PLAN FOR IMPLEMENTING A NATIONAL BIRTH DEFECTS MONITORING SYSTEM AND SURVEILLANCE PROGRAM.—

"(1) DEVELOPMENT.—The Secretary, acting through the Centers for Disease Control, shall develop a plan to establish regional birth defects monitoring programs to serve all States for the purpose of collecting and analyzing data on the incidence of birth defects with relevant epidemiologic data. Such plan shall specify how collaborative efforts between the Centers for Disease Control and responsible State agencies will be carried out, and may include the provision of grants or cooperative agreements, and technical assistance.

"(2) CLEARINGHOUSE.—The Centers for Disease Control shall develop a program plan to serve as the national clearinghouse of the collection and storage of data and information generated from birth defects monitoring programs developed under paragraph (1). Functions of the clearinghouse will include facilitating the coordination of birth defects research.

"(3) REPORT.—The Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report containing the plan required under paragraph (1), together with recommendations to facilitate the immediate implementation of such plan, on or before July 1, 1993.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $5,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.".

TITLE V—MISCELLANEOUS

SEC. 501. ESTABLISHMENT OF AN ADVISORY COUNCIL ON HEALTH PROMOTION AND DISEASE PREVENTION.

Title XVII (42 U.S.C. 300u et seq.) (as amended by sections 137 and 207) is further amended by adding at the end thereof the following new section:

"SEC. 1710. SECRETARY'S ADVISORY COUNCIL.

"(a) IN GENERAL.—The Secretary shall establish an advisory council on health promotion and disease prevention to be known as the Secretary's Advisory Council on Health Promotion and Disease Prevention (hereafter referred to in this section as the 'Council').

"(b) COMPOSITION.—The Council shall be composed of—

"(1) the Secretary;

"(2) recognized leaders in health promotion, academia, industry, non-profit private organizations and representatives of health care consumer groups, to be appointed by the Secretary;

"(3) ex officio members who shall include representatives of—

"(A) the Department of Health and Human Services as designated by the Secretary;

"(B) the Departments of Education;

"(C) the Department of Agriculture;

"(D) the Office of Science and Technology Policy;

"(E) the Surgeon Generals of all of the uniformed services; and

"(F) the chief medical officer of the Department of Veterans Affairs; and

"(4) the members of the National Health Objectives Advisory Committee established under section 1910K.

"(c) DUTIES.—The Council shall provide advice and recommendations to the Secretary concerning the goals and priorities of the Department relating to health promotion, disease prevention, preventive health services and the objectives established by the Secretary for the health status of the population of the United States under section 1906(d). The Council may also direct that recommendations for changes in priorities or programs be prepared and submitted to the Congress and the President.

"(d) FUNDING.—The Secretary is authorized to transfer not to exceed one percent of any appropriation authorized under this Act to provide the funds necessary for the operation of the Council. The total amount transferred under this subsection shall not exceed $400,000 for each fiscal year.".

SEC. 502. RESPONSIBILITIES OF MEMBERS OF THE COMMISSIONED CORPS FOR HEALTH PROMOTION AND DISEASE PREVENTION.

Section 204 (42 U.S.C. 205) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end thereof the following new subsection:

"(b) The Surgeon General shall notify all active members of the Commissioned Corps concerning any guidelines and recommendations for clinical practice that are developed or issued by the Public Health Service. The Surgeon General shall also ensure that members of the Commissioned Corps who are engaged in clinical practice are properly utilizing such guidelines and recommendations.".

SEC. 503. RESPONSIBILITIES OF THE SURGEON GENERAL FOR DISSEMINATING INFORMATION AND RECOMMENDATIONS.

Title XVII (42 U.S.C. 300u) (as amended by sections 137, 207 and 501) is further amended by adding at the end thereof the following new section:

"SEC. 1711. DISSEMINATION OF PREVENTION RECOMMENDATIONS.

"The Secretary, in consultation with the Assistant Secretary for Health, the Director of the Office of Disease Prevention and Health Promotion, the Surgeon General of the Public Health Service, and the Director of the Agency for Health Care Policy and Research, shall inform the Surgeon Generals of all the uniformed services, the Secretary of Veterans Affairs, and the Administrator of the Office of Personnel Management concerning any guidelines or recommendations for clinical practice that are developed by the Public Health Service. The Secretary shall annually prepare and submit to the appropriate committees of Congress, a report describing all such recommendations transmitted under this section.".

SEC. 504. CHANGE IN NAME OF CENTERS FOR DISEASE CONTROL.

(a) COMPREHENSIVE SMOKING EDUCATION ACT.—Section 3(b)(1)(A) of the Comprehensive Smoking Education Act (15 U.S.C. 1341(b)(1)(A)) is amended by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention".

(b) EDUCATION AMENDMENTS OF 1978.—Section 1121(b)(2) of the Education Amendments of 1978 is amended by striking out "Federal Center for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention".

(c) VETERANS' BENEFITS AND SERVICES ACT OF 1988.—Section 123(b)(1) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 210 note) is amended by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention".

(d) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 227 (42 U.S.C. 236) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(2) in section 317A(a) (42 U.S.C. 247b-1(a)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(3) in section 319(a) (42 U.S.C. 247d(a)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(4) in section 391 (42 U.S.C. 280b) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(5) in section 392 (42 U.S.C. 280b-1) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(6) in section 393 (42 U.S.C. 280b-2) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(7) in section 430(b)(2)(A)(i) (42 U.S.C. 285c-4(b)(2)(A)(i)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(8) in section 442(b)(2)(A) (42 U.S.C. 285d-7(b)(2)(A)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(9) in section 464D(b)(2)(A) (42 U.S.C. 285m-4(b)(2)(A)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(10) in section 494(a) (42 U.S.C. 289c(a)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(11) in section 508(b)(6) (42 U.S.C. 290aa-6(b)(6)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(12) in section 509B(a) (42 U.S.C. 290aa-9(a)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(13) in section 1706(c)(2)(B) (42 U.S.C. 300u-5(c)(2)(B)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(14) in section 2102 (42 U.S.C. 300aa-2) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(15) in section 2119(a)(2) (42 U.S.C. 300aa-19(a)(2)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(16) in section 2126(b)(2) (42 U.S.C. 300aa-26(b)(2)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(17) in section 2301(b)(4) (42 U.S.C. 300cc(b)(4)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(18) in section 2303 (42 U.S.C. 300cc-2) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(19) in section 2315(b) (42 U.S.C. 300cc-15(b)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(20) in section 2317 (42 U.S.C. 300cc-17) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(21) in section 2320 (42 U.S.C. 300cc-20) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(22) in section 2341(a) (42 U.S.C. 300cc-31(a)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(23) in section 2521 (42 U.S.C. 300ee-31) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(24) in section 2522(a) (42 U.S.C. 300ee-32(a)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(25) in section 2524(b)(2) (42 U.S.C. 300ee-34(b)(2)) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(26) in section 2601 by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(27) in section 2602(a)(1) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(28) in section 2603(a)(3)(B)(i) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(29) in section 2607(2) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(30) in section 2617(d)(3)(A) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(31) in section 2618(c)(1) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(32) in section 2641(a) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(33) in section 2643(c)(1)(A) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention";

(34) in section 2649 by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention"; and

(35) in section 2675(a) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention".

(e) HEALTH OMNIBUS PROGRAMS EXTENSION OF 1988.—The Health Omnibus Programs Extension of 1988 is amended—

(1) in section 161 (42 U.S.C. 241 note) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention";

(2) in section 252 (42 U.S.C. 300ee-1) by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention"; and

(3) in section 253 (42 U.S.C. 300ee-2) by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention".

(f) HEALTH RESEARCH EXTENSION ACT OF 1985.—Section 5(b)(1)(G) of the Health Research Extension Act of 1985 (42 U.S.C. 281 note) is amended by striking out "Centers for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention".

(g) PAINT POISONING PREVENTION.—Section 501(3)(B)(i) of Public Law 91-695 (42 U.S.C. 4841(3)(B)(i)) is amended by striking out "Center for Disease Control" and inserting in lieu thereof "Centers for Disease Control and Prevention".

(h) COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980.—Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9604) is amended by striking out "Centers for Disease Control" each place that such occurs and inserting in lieu thereof "Centers for Disease Control and Prevention".

SEC. 505. STUDY CONCERNING THE REDUCTION OF THE RISK OF BLOODBORNE DISEASE TRANSMISSION.

(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, acting through the Institute of Medicine, to conduct a study concerning surgical technique, including oral surgery, and medical device innovation to further reduce the risk of bloodborne disease transmission in the health care setting. The study shall review techniques and medical devices used in performing various surgical and dental procedures that present a risk of percutaneous injury and examine mechanisms, such as improvements in technique and product design modification, to enhance injury prevention during such procedures to further reduce the risk of bloodborne disease transmission.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the results of the study conducted under subsection (a).

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

BREAUX AMENDMENT NO. 1457

Mr. FORD (for himself Mr. BREAUX) proposed an amendment to the bill (H.R. 3866) to provide for the designation of the Flower Garden Banks National Marine Sanctuary, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—NATIONAL MARINE SANCTUARY

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

SEC. 101. Notwithstanding section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b))—

(1) the Secretary of Commerce shall, on January 17, 1992 (or as soon thereafter as is practicable), publish under that Act in the Federal Register a notice of designation of the Flower Garden Banks National Marine Sanctuary, as described in the notice of designation submitted to the Congress on November 20, 1991; and

(2) that designation shall take effect on January 1, 1992.

TITLE II—MERCHANT MARINE PROVISIONS

NON-VESSEL-OPERATING COMMON CARRIERS

SEC. 201. (a) SHORT TITLE.—This section may be cited as the "Non-Vessel-Operating Common Carrier Act of 1991".

(b) PROHIBITED ACTS.—Section 10(b) of the Shipping Act of 1984 (46 U.S.C. App. 1709(b)) is amended—

(1) in paragraph (14), by inserting ", insurance, or other surety" after "bond"; and

(2) in paragraph (15), by inserting ", insurance, or other surety" after "bond".

(c) SURETY FOR NVOCC'S.—Section 23 of the Shipping Act of 1984 (46 U.S.C. App. 1721), is amended—

(1) in the section heading by striking "BONDING OF" and inserting in lieu thereof "SURETY FOR";

(2) by amending subsection (a) to read as follows:

"(a) SURETY.—Each non-vessel-operating common carrier shall furnish to the Commission a bond, proof of insurance, or such other surety, as the Commission may require, in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier. Any bond submitted pursuant to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.";

(3) by striking subsection (b) and redesignating subsections (c) through (e) as subsections (b) through (d), respectively;

(4) in subsection (b), as so redesignated—

(A) by striking "BOND" in the subsection heading and inserting in lieu thereof "SURETY";

(B) by inserting ", insurance, or other surety" after "bond"; and

(C) by inserting "under this Act" after "transportation-related activities"; and

(5) in subsection (d), as so redesignated—

(A) by inserting ", insurance, or other surety" after "bond"; and

(B) by striking "subsection (d)" and inserting in lieu thereof "subsection (c)".

(d) INTERIM RULES AND REGULATIONS.—The Federal Maritime Commission may prescribe interim rules and regulations necessary to carry out the amendments made by this section.

(e) CONFORMING AMENDMENT.—The item relating to section 23 in the table of contents in the first section of the Shipping Act of 1984 is amended by striking "Bonding of" and inserting in lieu thereof "Surety for".

(f) EFFECTIVE DATE.—This section shall become effective 90 days after the date of its enactment.

CLARIFICATIONS OF, AND LIMITATIONS ON, GAMBLING DEVICES PROHIBITIONS

SEC. 202. (a) TRANSPORT TO A PLACE IN A STATE, ETC.—Section 2 of the Act of January 2, 1951 (15 U.S.C. 172; commonly referred to as the "Johnson Act"), is amended—

(1) by inserting before the first paragraph the following: "(a) GENERAL RULE.—";

(2) in subsection (a) (as so designated) by striking ", District of Columbia,";

(3) by inserting before the second paragraph the following: "(b) AUTHORITY OF FEDERAL TRADE COMMISSION.—"; and

(4) by adding at the end the following:

"(c) EXCEPTION.—This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

"(1) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 5, not a violation of that section; and

"(2) the gambling device remains on board that vessel while in that State.".

(b) REPAIR, OTHER TRANSPORT, ETC.—Section 5 of that Act (15 U.S.C. 1175) is amended—

(1) by inserting before "It shall be unlawful" the following: "(a) GENERAL RULE.—";

(2) by inserting before the period at the end the following: ", including on a vessel documented under chapter 121 of title 46, United States Code, or documented under the laws of a foreign country"; and

(3) by adding at the end the following:

"(b) EXCEPTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section does not prohibit—

"(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States; or

"(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if—

"(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

"(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession.

"(2) APPLICATION TO CERTAIN VOYAGES.—

"(A) GENERAL RULE.—Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair or use or that voyage or segment.

"(B) VOYAGE AND SEGMENT DESCRIBED.—A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively—

"(i) that begins and ends in the same State or possession of the United States, and

"(ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.".

(c) BOUNDARIES DEFINED.—The first section of that Act (15 U.S.C. 1171) is amended by adding at the end the following:

"(f) The term 'boundaries' has the same meaning given that term in section 2 of the Submerged Lands Act.".

STEVENS (AND MURKOWSKI) AMENDMENT NO. 1458

Mr. CHAFEE (for Mr. STEVENS, for himself and Mr. MURKOWSKI) proposed an amendment to the bill H.R. 3866, supra; as follows:

At the appropriate place, insert the following new title:

TITLE —IMPLEMENTATION OF MARITIME BOUNDARY AGREEMENT

AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 1. (a) PURPOSES.—Section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 180(b)(1)) is amended by inserting ", and fishery resources in the special areas" immediately before the semicolon at the end.

(b) DEFINITIONS.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (24) through (32) as paragraphs (25) through (33), respectively; and

(2) by inserting immediately after paragraph (23) the following new paragraph:

"(24) The term 'special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the United States-Soviet maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured."

(c) UNITED STATES MANAGEMENT AUTHORITY.—(1) Section 101(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(a)) is amended by inserting "and special areas" immediately before the period at the end.

(2) Section 101(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)) is amended by inserting immediately after paragraph (2) the following new paragraph:

"(3) All fishery resources in the special area.".

(d) FOREIGN FISHING.—Section 201 of the Magnuson Fishery Conservation and Management (16 U.S.C. 1821) is amended—

(1) in subsection (a)—

(A) by inserting "within the special area," immediately before "or for anadromous species"; and

(B) by striking "beyond the exclusive economic zone" and inserting in lieu thereof "beyond such zone or areas";

(2) in subsection (e)(1)(E)(IV), by inserting "or special areas" immediately after "exclusive economic zone";

(3) in subsection (i)—

(A) by inserting "or special areas" immediately before the period at the end of paragraph (1)(A);

(B) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(A); and

(C) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(B); and

(4) in subsection (j)—

(A) by inserting ", special areas," immediately after "exclusive economic zone"; and

(B) by inserting ", areas," immediately after "such zone".

(e) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended—

(1) in subsection (b)—

(A) by inserting "or special areas" immediately after "February 28, 1977)"; and

(B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas";

(2) in subsection (c)—

(A) by inserting "or special areas" immediately after "February 28, 1977)"; and

(B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas"; and

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

"(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with the Union of Soviet Socialist Republics of a duration of no more than 3 years, pursuant to which—

"(A) the Union of Soviet Socialist Republics will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

"(B) the United States will give fishing vessels of the Union of Soviet Socialist Republics the opportunity to conduct traditional fisheries within waters claimed by the Union of soviet Socialist Republics prior to the conclusion of the agreement referred to in subparagraph (A), east of the Maritime boundary, including the eastern special areas described in article 3(1) of the Agreement;

"(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

"(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

"(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

"(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).".

(f) PERMITS FOR FOREIGN FISHING.—Section 204(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824 (a)) is amended—

(1) by inserting "within the special areas," immediately before "or for anadromous species"; and

(2) by inserting "or areas" immediately after "such zone".

(g) CONTENTS OF FISHERY MANAGEMENT PLANS.—Section 303(b)(1)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)(1)(A)) is amended—

(1) by inserting "or special areas," immediately after "exclusive economic zone"; and

(2) by inserting "or areas" immediately after "such zone".

(h) PROHIBITED ACTS.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (1)(K), by inserting "or special areas" immediately after "exclusive economic zone";

(2) in paragraph (2)(B)—

(A) by inserting "within the special areas," immediately after "exclusive economic zone";

(B) by inserting "or areas" immediately after "such zone";

(3) in paragraph (3), by inserting "or special areas" immediately after "exclusive economic zone"; and

(4) in paragraph (4), by inserting "or special areas" immediately after "exclusive economic zone".

(i) ENFORCEMENT.—Section 311(b)(2) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(b)(2)) is amended by inserting "and special areas" immediately after "exclusive economic zone".

AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT OF 1982

SEC. 2. (a) DEFINITIONS.—(1) Section 2(c) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773(c)) is amended to read as follows:

"(c) 'Exclusive economic zone' means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.".

(2) Section 2 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773) is amended by adding at the end the following new subsection:

"(h) 'Special areas' means the areas referred to as eastern special areas in Article

3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the United States-Soviet maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

(b) UNLAWFUL ACTS.—Section 7(b) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773e(b)) is amended by striking "fishery conservation zone" and inserting in lieu thereof "exclusive economic zone and special areas".

AMENDMENTS TO FUR SEAL ACT OF 1966

SEC. 3. Section 101 of the Fur Seal Act of 1966 (16 U.S.C. 1151) is amended—

(1) by redesignating subsections (f) through (m) as subsections (g) through (n), respectively; and

(2) by inserting immediately after subsection (e) the following new subsection:

"(f) 'Jurisdiction of the United States' includes jurisdiction over the special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(24)).".

AMENDMENTS TO MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 4. Section 3(14) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(14)) is amended to read as follows:

"(14) the term 'waters under the jurisdiction of the United States' means—

"(A) the territorial sea of the United States;

"(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

"(C) the areas referred to as eastern special areas in Article 3(1) of the agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the United States-Soviet Maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

RELATIONSHIP TO ENDANGERED SPECIES ACT OF 1973

SEC. 5. The special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(24)) shall be considered places that are subject to the jurisdiction of the United States for the purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

AMENDMENTS TO PACIFIC SALMON TREATY ACT OF 1985

SEC. 6. (a) DEFINITIONS.—Section 2 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631) is amended—

(1) by redesignating subsections (h) through (j) as subsections (i) through (k), respectively; and

(2) by inserting immediately after subsection (g) the following new subsection:

"(h) 'Special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the United States-Soviet maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

(b) RULEMAKING.—Section 7(a) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3636(a)) is amended by inserting "and special areas" immediately after "Exclusive Economic Zone".

NATIONAL SEA GRANT COLLEGE PROGRAM

SEC. 7.(a) DEFINITIONS.—Section 203(6) of the National Sea Grant College Program Act (33 U.S.C. 1122(6)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by redesignating subparagraph (F) as subparagraph (G); and

(3) by inserting immediately after subparagraph (E) the following new subparagraph:

"(F) the special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (18 U.S.C. 1802(24)); and".

(b) INTERNATIONAL PROGRAM.—Section 3(a)(6) of the Sea Grant Program Improvement Act of 1976 (33 U.S.C. 1124a(a)(6)) is amended by inserting "and special areas" immediately after "exclusive economic zone".

EFFECTIVE DATES

SEC. 8.(a) IN GENERAL.—The amendment made by section 1(e)(3) takes effect on the date of enactment of this Act, and the amendments made by the other provisions of this title, except as provided in subsection (b), shall be effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(b) AUTHORITY TO PRESCRIBE REGULATIONS.—The authority to prescribe regulations to implement the amendments made by this title shall be effective on the date of enactment of this Act, but no such regulation may be effective until the date on which the Agreement described in subsection (a) enters into force for the United States.

AMERICAN TECHNOLOGY PREEMINENCE ACT

HOLLINGS AMENDMENT NO. 1459

Mr. FORD (for Mr. HOLLINGS) proposed an amendment to the bill (S. 1034) to enhance the position of U.S. industry through the application of the results of Federal research and development, and for other purposes, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "American Technology Preeminence Act of 1991".

SEC. 2. DEFINITIONS.

As used in the Act—

(1) the term "high-resolution information systems" means equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound;

(2) the term "advanced manufacturing technology" means numerically-controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving manufacturing and industrial processes;

(3) the term "advanced materials" means a field of research including the study of composites, ceramics, metals, polymers, superconducting materials, materials produced through biotechnology, and materials production technologies, including coated systems, that provide the potential for significant advantages over existing materials;

(4) the term "Institute" means the National Institute of Standards and Technology'

(5) the term "Secretary" means the Secretary of Commerce; and

(6) the term "Under Secretary" means the Under Secretary of Commerce for Technology.

TITLE I—DEPARTMENT OF COMMERCE RESEARCH AND TECHNOLOGY

SEC. 101.SHORT TITLE.

This title may be cited as the "Technology Administration Authorization Act of 1991".

SEC. 102. STATEMENT OF POLICY.

Congress finds that in order to help United States industries to speed the development of new products and processes so as to maintain the economic competitiveness of the Nation, it is necessary to strengthen the programs and activities of the Department of Commerce's Technology Administration and National Institute of Standards and Technology.

SEC. 103. TECHNOLOGY ADMINISTRATION.

(a) FISCAL YEAR 1992—(1) There are authorized to be appropriated to the Secretary, to carry out the activities of the Under Secretary and the Assistant Secretary for Technology Policy, $10,000,000 for fiscal year 1992, which shall be available for the following line items:

(A) Office of the Under Secretary, $2,000,000.

(B) Technology Policy, $4,000.000.

(C) Japanese Technical Literature, $1,500,000.

(D) Clearinghouse on State and Local Initiatives on Productivity, Technology, and Innovation, $1,000,000.

(E) National Technical Information Service, $1,500,000 to carry out the modernization plan described in section 212(f)(3)(D) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(f)(3)(D)).

(2) Funds may be transferred among the line items listed in paragraph (1), so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such paragraph and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(b) FISCAL YEAR 1993.—(1) There are authorized to be appropriated to the Secretary, to carry out the activities of the Under Secretary and the Assistant Secretary for Technology Policy, $10,000,000 for fiscal year 1993, which shall be available for the following line items:

(A) Office of the Under Secretary, $2,000,000.

(B) Technology Policy, $4,000,000.

(C) Japanese Technical Literature, $1,500,000.

(D) Clearinghouse on State and Local Initiatives on Productivity, Technology, and Innovation, $1,000,000.

(E) National Technical Information Service, $1,500,000 to carry out the modernization plan described in section 212(f)(3)(D) of the National Technical Informtion Act of 1988 (15 U.S.C. 3704b(f)(3)(D)).

(2) Funds may be transferred among the line items listed in paragraph (1), so long as the net funds transferred to or from any line item to not exceed 10 percent of the amount authorized for that line item in such paragraph and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(c) OPERATING COSTS.—Operating costs for the National Technical Information Service associated with the acquisition, processing, storage, bibliographic control, and archiving of information and documents shall be recovered primarily through the collection of fees.

(d) REPORT AND CERTIFICATION TO CONGRESS.—Within 90 days after the date of enactment of this Act, the Secretary shall submit to Congress a report which—

(1) describes the Department of Commerce's response to the Inspector General's Report No. ATD-024-0-001;

(2) includes a revised detailed modernization plan for the National Technical Information Service;

(3) contains a business plan for the National Technical Information Service which includes detailed profit and loss analysis for groups of products and services and for major market segments; and

(4) certifies that the National Technical Information Service has—

(A) employed a chief financial officer who is a certified public accountant or equivalently experienced accountant with experience in the dissemination of scientific and technical information; and

(B) begun taking reasonable steps toward strengthening its accounting system in response to the Inspector General's report described in paragraph (1).

(e) TECHNICAL AMENDMENT.—Section 5422(a) of the Omnibus Trade and competitiveness Act of 1988 (15 U.S.C. 4603a(a)) and section 273(c)(4) of the National Defense Authorization Act for Fiscal years 1988 and 1989 (15 U.S.C. 4603(c)(4)) are each amended by striking "Economic Affairs" and inserting in lieu thereof "Technology".

SEC. 104. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) FISCAL YEAR 1992.—(1) There are authorized to be appropriated to the Secretary, to carry out the intramural scientific and technical research and services activities of the Institute, $210,000,000 for fiscal year 1992, which shall be available for the following line items:

(A) Electronics and Electrical Measurements, $33,700,000.

(B) Manufacturing Engineering, $13,500,000.

(C) Chemical Science and Technology, $22,000,000.

(D) Physics, $27,000,000.

(E) Materials Science and Engineering, $30,000,000.

(F) Building and Fire Research, $12,300,000.

(G) Computer Systems, $16,000,000.

(H) Applied Mathematics and Scientific Computing, $6,500,000.

(I) Technology Assistance, $11,000,000.

(J) Research Support Activities, $38,000,000.

(2)(A) Of the total of the amounts authorized under paragraph (1), $2,000,000 are authorized only for steel technology.

(B) Of the amount authorized under paragraph (1)(I)—

(i) $500,000 are authorized only for the evaluation of nonenergy-related inventions and related technology extension activities;

(ii) $250,000 are authorized only for Institute participation in the pilot program established under subsection (e); and

(iii) $2,700,000 are authorized only for the Institute's management of the extramural funding programs authorized under section 105.

(C) Of the total amount authorized under paragraph (1)(J), $7,565,000 are authorized only for the technical competence fund.

(b) FISCAL YEAR 1993.—(1) There are authorized to be appropriated to the Secretary, to carry out the intramural scientific and technical research and services activities of the Institute, $221,200,000 for fiscal year 1993, which shall be available for the following line items:

(A) Electronics and Electrical Measurements, $36,000,000.

(B) Manufacturing Engineering, $16,000,000.

(C) Chemical Science and Technology, $22,500,000.

(D) Physics, $28,700,000.

(E) Materials Science and Engineering, $39,400,000.

(F) Building and Fire Research, $12,000,000.

(G) Computer Systems $20,600,000.

(H) Applied Mathematics and Scientific Computing, $6,300,000.

(I) Technology Assistance, $10,800,000.

(J) Research Support Activities, $25,000,000.

(K) Pay Raise, $3,900,000.

(2)(A) Of the total of the amounts authorized under paragraph (1), $2,000,000 are authorized only for steel technology.

(B) Of the amount authorized under paragraph (1)(I)—

(i) $500,000 are authorized only for the evaluation of nonenergy-related inventions and related technology extension activities;

(ii) $250,000 are authorized only for Institute participation in the pilot program established under subsection (e); and

(iii) $5,000,000 are authorized only for the Institute's management of the extramural funding programs authorized under section 105.

(C) Of the total amount authorized under paragraph (1)(J), $7,223,000 are authorized only for the technical competence fund.

(3) In addition to the amounts authorized under paragraph (1), there are authorized to be appropriated to the Secretary for fiscal year 1993 $34,800,000 for the renovation and upgrading of the Institute's facilities.

(c) TRANSFERS.—(1) Funds may be transferred among the line items listed in subsection (a)(1) and among the line items listed in subsection (b)(1), so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such subsection and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(2) The Secretary may propose transfers to or from any line item listed in subsection (a)(1) or subsection (b)(1) exceeding 10 percent of the amount authorized for such line item, but such proposed transfer may not be made unless—

(A) a full and complete explanation of any such proposed transfer and the reason therefor are transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing Committees of the House of Representatives and the Senate, and

(B) 30 calendar days have passed following the transmission of such written explanation.

(d) RELATION TO OTHER AUTHORIZATIONS.—Except for authorizations provided in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 102 Stat. 1448), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), and the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (15 U.S.C. 5101 et seq.), this Act contains the complete authorizations of appropriations for the Institute for fiscal years 1992 and 1993. This subsection shall not limit the authority of the Institute to accept funds appropriated to any other Federal agency or to perform work for others.

(e) PILOT PROGRAM.—Pursuant to the authorizations contained in subsections (a)(1)(I) and (b)(1)(I), the Secretary is authorized to pay the Federal share of the cost of establishing and carrying out a standards assistance pilot program under section 112 of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 (15 U.S.C. 272 note). The purpose of the pilot program is to assist a country or countries that have requested assistance from the United States in the development of comprehensive industrial standards by providing the continuous presence of United States personnel on-site for a period of 2 or more years to provide such assistance and by providing, as necessary, additional technical support from within the Institue. Such funds shall be made available for such purpose only to the extent that matching funds are received by the National Institute of Standards and Technology from sources outside the Federal Government.

(f) CONSTRUCTION OF FACILITIES.—Section 14 of the National Institute of Standards and Technology Act (15 U.S.C. 278d) is amended by striking "herein" and all that follows, and inserting in lieu thereof "herein.".

(g) FIRE AND BUILDING PROGRAMS.—The fire research and building technology programs of the Institute may be combined for administrative purposes only, and separate budget accounts for fire research and building technology shall be maintained. No later than December 31, 1992, the Secretary, acting through the Director of the Institute, shall report to Congress on the results of the combination, on efforts to preserve the integrity of the fire research and building technology programs, on the long-range basic and applied research plans of the two programs, on procedures for receiving advice on fire and earthquake research priorities from constituencies concerned with public safety, and on the relation between the combined program at the Institute and the United States Fire Administration.

(h) EDUCATIONAL PROGRAMS.—(1) Section 18 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-1)) is amended by striking the period at the end of the first sentence and inserting in lieu thereof ", and to United States citizens for research and technical activities on Institute programs.".

(2) Section 17 of the National Institute of Standards and Technology Act (15 U.S.C. 278g) is amended by adding at the end the following new subsection:

"(d) For any scientific and engineering disciplines for which there is a shortage of suitably qualified and available United States citizens and nationals, the Secretary is authorized to recruit and employ in scientific and engineering fields at the Institute foreign nationals who have been lawfully ad-

mitted to the United States for permanent residence under the Immigration and Nationality Act and who intend to become United States citizens. Employment of a person under this pragraph shall not be subject to the provisions of title 5, United States Code, governing employment in the competitive service, or to any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them.".

(i) CORE PROGRAM FUNDING.—It is the sense of the Congress that the intramural scientific and technical research and services activities of the National Institute of Standards and Technology should share fully in any funding increases provided to the Institute.

SEC. 105. EXTRAMURAL PROGRAMS OF THE INSTITUTE.

(a) FISCAL YEAR 1992.—In addition to any sums otherwise authorized under this Act, there are authorized to be appropriated to the Secretary, to carry out the extramural industrial technology services programs of the Institute created under sections 25, 26, and 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278k, 2781, and 278n), $217,500,000 for fiscal year 1992, which shall be available for the following line items:

(1) Regional Centers for the Transfer of Manufacturing Technology, $25,000,000.

(2) State Technology Extension Program, $2,500,000.

(3) Advanced Technology Program, $100,000,000.

(b) FISCAL YEAR 1993.—In addition to any sums otherwise authorized under this Act, there are authorized to be appropriated to the Secretary, to carry out the extramural industrial technology services programs of the Institute created under sections 25, 26, and 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278k, 2781, and 278n), $127,500,000 for fiscal year 1993, which shall be available for the following line items:

(1) Regional Centers for the Transfer of Manufacturing Technology and Satellite Manufacturing Centers, $25,000,000.

(2) State Technology Extension Program, $2,500,000.

(3) Advanced Technology Program, $100,000,000.

(c) LIMITATION.—No funds are authorized under this section for any project under the extramural programs of the Institute which have not been competitively reviewed through the merit review processes required by the National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.).

(d) AMENDMENTS TO EXTENSION PROGRAM.—Section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 2781 note) is amended by striking paragraph (5).

(e) AMENDMENTS TO EXTENSION ACTIVITIES.—(1) Section 25(c)(6) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(c)(6)) is amended by inserting before the period at the end the following: "except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director".

(2) Section 25(d) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(d)) is amended to read as follows:

"(d) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section.".

(f) ADVISORY COMMITTEE.—Section 5142(f) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4632(f)) is amended by striking "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993".

SEC. 106. SALARY ADJUSTMENTS.

In addition to any sums otherwise authorized by this Act, there are authorized to be appropriated to the Secretary for fiscal years 1992 and 1993 such additional sums as may be necessary to make any adjustments in salary, pay, retirement, and other employee benefits which may be provided for by law.

SEC. 107. METRIC AMENDMENT.

(a) The Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is amended—

(1) in sections 4(a)(2), (4), and (5), 4(b), and 5(c)(1), by striking "weight" and inserting in lieu thereof "weight or mass";

(2) in sections 4(a)(5) and 5(d), by striking "weights" and inserting in lieu thereof "weights or masses";

(3) in section 4(a)(2), by inserting ", using the most appropriate units of the SI metric system as the primary system for measuring quantity" after "panel of that label"; and

(4) in section 4(a)(3)(A)—

(A) by striking "containing" and inserting in lieu thereof "that also displays the avoirdupois system of measure, and that contains" in clause (i);

(B) by striking "that also displays the avoirdupois system of measure" after "random package" in clause (ii);

(C) by inserting "that also displays the avoirdupois system of measure" after "linear measure" in clause (iii); and

(D) by inserting "that also displays the avoirdupois system of measure" after "measure of area" in clause (iv).

(b) This section shall take effect 2 years after the date of enactment of this Act.

SEC. 108. TRANSFER OF FEDERAL SCIENTIFIC AND TECHNICAL INFORMATION.

(a) TRANSFER.—The head of each Federal executive department or agency shall transfer in a timely manner to the National Technical Information Service unclassified scientific, technical, and engineering information which results from federally funded research and development activities for dissemination to the private sector, academia, State and local governments, and Federal agencies. Only information which would otherwise be available for public dissemination shall be transferred under this subsection. Such information shall include technical reports and information, computer software, application assessments generated pursuant to section 11(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(c)), and information regarding training technology and other federally owned or originated technologies. The Secretary shall issue regulations within one year after the date of enactment of this Act outlining procedures for the ongoing transfer of such information to the National Technical Information Service.

(b) ANNUAL REPORT TO CONGRESS.—As part of the annual report required under section 212(f)(3) of the National Technical Information Act of 1988, the Secretary shall report to Congress on the status of efforts under this section to ensure access to Federal scientific and technical information by the public. Such report shall include—

(1) an evaluation of the comprehensiveness of transfers of information by each Federal executive department or agency under subsection (a);

(2) a description of the use of Federal scientific and technical information;

(3) plans for improving public access to Federal scientific and technical information; and

(4) recommendations for legislation necessary to improve public access to Federal scientific and technical information.

SEC. 109. AVAILABILITY OF APPROPRIATIONS.

Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

SEC. 110. REPORT ON FACILITIES NEEDS.

By March 1, 1992, the Director of the Institute shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on what renovations and upgrades of Institute facilities are necessary over the next decade. The report shall include a ranking of facilities needs in order of priority, an estimate of costs, and the Director's plan for meeting these needs.

SEC. 111. BUY-AMERICAN PROVISIONS.

(a) RESTRICTIONS ON CONTRACT AWARDS.—No contract or subcontract made with funds authorized under this title may be awarded for the procurement of an article, material, or supply produced or manufactured in a foreign country whose government unfairly maintains in government procurement a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harms to United States businesses, ad identified by the President pursuant to subsection (g)(1)(A) of section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)). Any such determination shall be made in accordance with such section 305.

(b) PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—If it has been finally determined by a court or a Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or an inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract from the Department of Commerce, pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(c) BUY-AMERICAN REQUIREMENT.—(1) The Secretary is authorized to award to a domestic firm a contract for the purchase of goods that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(A) the final product of the domestic firm will be completely assembled in the United States;

(B) when completely assembled, more than 50 percent of the final product of the domestic firm will be domestically produced; and

(C) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

(2) This subsection shall not apply to the extent to which—

(A) in the opinion of the Secretary, after taking into consideration international obligations and trade relations, such applicability would not be in the public interest;

(B) in the opinion of the Secretary, after consultation with the Secretary of Defense, compelling national security considerations require otherwise; or

(C) the President determines that such an award would be in violation of the General

Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(3) This subsection shall apply only to contracts made for which—

(A) amounts are authorized by this title to be made available; and

(B) solicitations for bids are issued after the date of enactment of this Act.

(4) The Secretary, before January 1, 1993, shall report to the Congress on contracts covered under this subsection—

(A) entered into with foreign firms pursuant to a determination made under paragraph (2) of this subsection; and

(B) awarded to domestic firms pursuant to paragraph (1) of this subsection, in fiscal years 1991 and 1992.

(5) For purposes of this subsection—

(A) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(B) the term "foreign firm" means a business entity not described in subparagraph (A).

TITLE II—ADVANCED TECHNOLOGY PROGRAM AMENDMENTS

SEC. 201. EMERGING TECHNOLOGIES RESEARCH AND DEVELOPMENT.

(a) SHORT TITLE.—This title may be cited as the "Emerging Technologies and Advanced Technology Program Amendments Act of 1991".

(b) FINDINGS AND PURPOSES.—(1) The Congress finds that—

(A) technological innovation and its profitable inclusion in commercial products are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

(B) maintaining viable United States-based high technology industries is vital to both the national security and the economic well-being of the United States;

(C) the Department of Commerce has reported that the United States is losing or losing badly, relative to Japan and Europe, in many important emerging technologies and risks losing much of the $350 billion United States market and $1 trillion world market expected to develop by the year 2000 for products based on emerging technologies;

(D) it is in the national interest for the Federal Government to encourage and, in selected cases, provide limited financial assistance to industry-led private sector efforts to increase research and development in economically critical areas of technology;

(E) joint ventures are a particularly effective and appropriate way to pool resources to conduct research that no single company is likely to undertake but which will create new generic technologies that will benefit an entire industry and the welfare of the Nation;

(F) it is vital that industry within the United States attains a leadership role and capability in development, design, and manufacturing in fields such as high-resolution information systems, advanced manufacturing, and advanced materials; and

(G) the Advanced Technology Program, established under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), is the appropriate vehicle for the United States Government to provide limited assistance to joint development within the United States of new high technology capabilities in fields such as high-resolution information systems, advanced manufacturing technology, and advanced materials, and can help encourage United States industry to work together on problems of mutual concern.

(2) The purposes of this section are—

(A) to strengthen the Advanced Technology Program created under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), and to provide improved guidelines for the allocation of Advanced Technology Program funds appropriated under the authorizations contained in section 105 of this Act;

(B) to promote and assist in the development of advanced technologies and the generic application of such technologies to civilian products, processes, and services;

(C) to improve the competitive position of United States industry by supporting industry-led research and development projects in areas of emerging technology which have substantial potential to advance the economic well-being and national security of the United States, such as high-resolution information systems, advanced manufacturing technology, and advanced materials; and

(D) to support projects that range from idea exploration to prototype development and address long-term, high-risk areas of technological research, development, and application that are not otherwise being adequately developed by the private sector, but are likely to yield important benefits to the Nation.

(c) ADVANCED TECHNOLOGY PROGRAM.—(1) Section 28(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(a)), is amended by adding at the end the following new sentence: "In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)."

(2) Section 28(b)(1) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(b)(1)), is amended by inserting "industry-led" immediately after "aid".

(3) Section 28(b)(1)(B) of the Act of March 3, 1901 (15 U.S.C. 278n(b)(1)(B)), is amended by inserting "by means of grants, cooperative agreements, or contracts" immediately after "such joint ventures".

(4) Section 28(b)(2) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(b)(2)), is amended to read as follows:

"(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;".

(5) Section 28(d)(2) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(d)(2)), is amended to read as follows:

"(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.".

(6) Section 28(d) of the Act of National Institute of Standards and Technology Act (15 U.S.C. 278n(d)(7)), is amended—

(A) by striking paragraph (7);

(B) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively; and

(C) by adding at the end the following new paragraphs:

"(9) A company shall be eligible to receive financial assistance under this section only if—

"(A) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

"(B) either—

"(i) the company is a United States-owned company; or

"(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded by any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

"(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

"(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

"(B) For purposes of this paragraph, the term 'intellectual property' means an invention patentable under title 35, United States Code, or any patent on such an invention.

"(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.".

(7) Section 28(e) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(e)), is amended to read as follows:

"(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so.".

(8) Section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), is amended by adding at the end the following new subsections:

"(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

"(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

"(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

"(i) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

"(j) As used in this section—

"(1) the term 'joint venture' means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

"(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

"(B) the development or testing of basic engineering techniques;

"(C) the extension of investigative finding or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

"(D) the collection, exchange, and analysis of research information;

"(E) the production of any product, process, or service; or

"(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and

"(2) the term 'United States-owned company' means a company that has majority ownership or control by individuals who are citizens of the United States."

(d) EFFECTIVE DATE.—The amendments in subsection (c) shall take effect immediately upon enactment; however, the amendments shall not apply to applications submitted before the date of enactment of this Act.

(e) MANAGEMENT COSTS.—Section 2 of the National Institute of Standards and Technology Act (15 U.S.C. 272) is amended by adding at the end thereof the following new subsection:

"(d) In carrying out the extramural funding programs of the Institute, including the programs established under section 25, 26, and 28 of this Act, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.".

(f) COMPREHENSIVE REPORT. The Secretary shall, not later than 4 years after the date of enactment of this Act, submit to each House of the Congress and the President a comprehensive report on the results of the Advanced Technology Program established under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), including any activities in the areas of high-resolution information systems, advanced manufacturing technology, and advanced materials.

TITLE III—AMENDMENTS TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

SEC. 301. FEDERAL LABORATORY CONSORTIUM.

(a) Section 11(e)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(2)) is amended by inserting "senior" after "Consortium and a".

(b) Section 11 (e)(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(6)) is amended by adding at the end the following: "Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.".

(c) Section 11(e)(7)(B)(ii) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(7)(B)(ii)) is amended by striking "or 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, or 1996".

(d) Section 11(e)(8) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(8)) is repealed.

SEC. 302. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

(a) Section 12(d)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(1)) is amended by inserting "intellectual property," after "equipment," both places it appears.

(b) Within 6 months after the date of enactment of this Act, the Secretary shall report to the Congress on the advisability of authorizing a new form of cooperative research and development agreement which would permit Federal contributions of funds.

SEC. 303. RESEARCH EQUIPMENT.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710) is amended by adding at the end the following new subsection:

"(i) RESEARCH EQUIPMENT.—The Director of a laboratory, or the head of any Federal agency or department, may give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer with a gift under the section.".

SEC. 304. DEFINITION OF FEDERAL AGENCY.

Section 4(8) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(8)) is amended by inserting ", as well as any agency of the legislative branch of the Federal Government" after "of such title".

SEC. 305. QUALITY IMPROVEMENT.

Section 17(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a(f)) is amended by adding at the end the following: "The Director is authorized to use appropriated funds to carry out responsibilities under this Act.".

SEC. 306. UNDER SECRETARY.

Section 5(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3704(c)) is amended—

(1) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(2) by inserting after paragraph (12) the following new paragraph:

"(13) serve as a focal point for discussions among United States companies on topics of interest to industry and labor, including discussions regarding manufacturing and discussions regarding emerging technologies;".

TITLE IV—NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY

SEC. 401. NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY.

(a) ESTABLISHMENT AND PURPOSE.—There is established a National Commission on Reducing Capital Costs for Emerging Technology (hereafter in this section referred to as the "Commission"), for the purpose of developing recommendations to increase the competitiveness of United States industry by encouraging investments in research, the development of new process and product technologies, and the production of those technologies.

(b) ISSUES.—The function of the Commission shall be to address the following issues:

(1) How has the overall cost of capital paid by United States companies differed during the past decade from that paid by companies in other industrial economies such as Germany, Japan, and the United Kingdom?

(2) To what extent has the cost of capital faced by technology companies differed from the overall cost of capital in each of these nations during the same period?

(3) To what extent do high capital costs in general inhibit investment in projects with long-term payoffs, such as the development and commercialization of new technology?

(4) To what extent does the structure of the financial services industry in the United States affect the flow of capital to advanced technology investment, and to what extent do current practices in the equity markets raise the cost of capital and inhibit the availability of capital to fund research and development, purchase advanced manufacturing equipment, and fund other investments necessary to commercialize advanced technology?

(5) In what ways do Government regulations influence the cost of capital in the United States?

(6) To what extent have national differences in capital costs facilitated the foreign acquisition of technology-based United States companies?

(7) What macroeconomic and other policies would promote greater investment in advanced manufacturing techniques, in research and development, and in other activities necessary to commercialize and produce now technologies?

(8) What specific policies should the Federal Government follow in order to reduce the cost of capital for United States companies to levels that are near parity with those

faced by the Nation's principal trading partners?

(c) MEMBERSHIP.—(1) The Commission shall be composed of 9 members who are eminent in such fields as advanced technology, manufacturing, finance, and international economics and who are appointed as follows:

(A) 3 individuals appointed by the President, one of whom shall chair the Commission.

(B) 3 individuals appointed by the Speaker of the House of Representatives, 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives.

(C) 3 individuals appointed by the President pro tempore of the Senate, 2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate.

(2) Each member shall be appointed for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) PROCEDURES.—(1) The Chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act.

(2) Recommendations of the Commissions shall require the approval of three-quarters of the members of the Commission.

(3) The Commission may use such personnel detailed from Federal agencies as may be necessary to enable it to carry out its duties.

(4) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(e) REPORTS.—The Commission shall, within 1 year after the date of enactment of this Act, submit to the President and Congress a report containing legislative and other recommendations with respect to the issues addressed under subsection (b).

(f) CONSULTATION.—The Commission shall consult, as appropriate, with the Commission on Technology and Procurement established by section 505 of this Act.

(g) TERMINATION.—The Commission shall terminate 6 months after the submission of its report under subsection (e).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993.

TITLE V—STUDIES AND REPORTS

SEC. 501. HIGH-RESOLUTION INFORMATION SYSTEMS ADVISORY BOARD.

(a) ESTABLISHMENT AND PURPOSE.—The Directory of the Office of Science and Technology Policy shall establish within that office a High-Resolution Information Systems Advisory Board (hereafter in this section referred to the "Board") to monitor and, as appropriate, foster the development of United States-based high-resolution information systems industries.

(b) DEFINITION.—As used in this title, the term "high-resolution information systems" means the equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound.

(c) FUNCTIONS.—The board shall—

(1) collect and analyze information on the range of factors which will determine whether United States-based high-resolution information systems industries will develop and become competitive, including such factors as technology policies, specialized financial problems, international standards and foreign trade practices, Federal regulations and procurement policies, and licensing practices;

(2) identify areas where appropriate cooperation between the Federal Government and the private sector, including Government support for industry-led joint research and development ventures, would enhance United States industrial competitiveness in this area, and provide advice and guidance for such cooperative efforts;

(3) provide guidance on what Federal policies and practices, particularly in such areas as procurement and the transfer of federally-funded research, are necessary to help establish United States-based high-resolution information systems industries;

(4) provide advice on the coordination of Federal defense and civilian activities to maximize and assist with the transfer of technologies in the field of high-resolution information systems into commercial products; and

(5) generally develop recommendations for guiding Federal agency activities related to the development of United States-based high-resolution information systems industries.

(d) MEMBERSHIP AND PROCEDURES.—(1)(A) The Board shall be composed of 13 members, 7 of whom shall constitute a quorum.

(B) The Director of the Office of Science and Technology Policy, the Secretary, the Directory of the Defense Advanced Research Projects Agency, and the Administrator of the National Aeronautics and Space Administration, or their designees, shall serve as members of the Board.

(C) The President, acting through the Director of the Office of Science and Technology Policy, within 90 days after the date of enactment of this Act, shall appoint as additional members of the Board—

(i) 5 members from the private electronics manufacturing sector, drawn from such sectors as semiconductors, display equipment, computers, consumer electronics, and telecommunications, with 1 member also representing labor;

(ii) 3 members from the private nonmanufacturing sector, including 1 representative from the transmission delivery the software industry, the entertainment industry, and the investment community; and

(iii) 1 member from academia.

At least 1 member appointed under this subparagraph shall be from small business.

(2) The Director of the Office of Science and Technology Policy or the Director's designee shall chair the Board.

(3) The chairman shall call the first meeting of the Board within 30 days after the appointment of members is completed.

(4) The Board may use such personnel detailed from Federal agencies as may be necessary to enable it to perform its functions.

(5) Members of the Board, other than full-time employees of the Federal Government, while attending meetings of the Board or otherwise performing duties of the Board while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) The Board shall submit a report of its activities once every year after its establishment to the President, the Committees on Science, Space, and Technology and on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(e) LIMITATION ON FUNCTIONS.—Nothing in this section or any other provision of this Act shall be construed—

(1) to authorize the Board to investigate or provide advice or guidance with respect to standards or other regulations or policies related to the transmission, delivery, or receipt of broadcast television or cable television signals subject to regulation by the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(2) to limit, modify, or affect in any manner the authorities, functions, or responsibilities of the Federal Communications Commission or the National Telecommunications and Information Administration.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993.

SEC. 502. MAJOR SCIENCE AND TECHNOLOGY PROPOSALS.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended by adding at the end of title II the following new section:

"MAJOR SCIENCE AND TECHNOLOGY PROPOSALS

"SEC. 209. The Director shall identify and provide an annual report to Congress on each major multinational science and technology project, in which the United Sta tes is not a participant, which has a total estimated cost greater than $1,000,000,000.".

SEC. 503. BIENNIAL NATIONAL CRITICAL TECHNOLOGIES REPORT AMENDMENTS.

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683) is amended—

(1) in subsection (a), by inserting ", but shall include the most economically important emerging civilian technologies during the 10-year period following such report, together with the estimated current and future size of domestic and international markets for products derived from these technologies" after "may not exceed 30";

(2) in subsection (b), by striking "national security and" and inserting in lieu thereof "national security or";

(3) by redesignating subsection (d) as subsection (e); and

(4) by inserting after subsection (c) the following new subsection:

"(d) Each such reaport shall include—

"(1) an identification of the types of research and development needed to close any significant gaps of deficiencies in the technology base of the United States, as compared with the technology bases of major trading partners; and

"(2) a list of the technologies and markets targeted by major trading partners for development or capture.".

SEC. 504. CRITICAL INDUSTRIES.

(a) IDENTIFICATION OF INDUSTRIES AND DEVELOPMENT OF PLAN.—The Secretary shall—

(1) identify those civilian industries in the United States that are necessary to support a robust manufacturing infrastructure and critical to the economic security of the United States; and

(2) list the major research and development initiatives being undertaken, and the substantial investments being made, by the Federal Government, including its research laboratories, in each of the critical industries identified under paragraph (1).

(b) INITIAL REPORT.—The Secretary shall submit a report to the Congress within 1 year after the date of enactment of this Act on the actions taken under subsection (a).

(c) ANNUAL UPDATES.—The Secretary shall annually submit to the Congress an update

of the report submitted under subsection (b). Each such update shall—

(1) describe that status of each identified critical industry, including the advances and declines occurring since the most recent report; and

(2) identify any industries that should be added to the list of critical industries.

SEC. 505. RESEARCH, DEVELOPMENT, TECHNOLOGY UTILIZATION, AND GOVERNMENT PROCUREMENT POLICY.

(a) ESTABLISHMENT OF COMMISSION.—The Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, shall establish a Commission on Technology and Procurement (hereafter in this section referred to as the "Commission"), for the purposes of analyzing the effect of Federal Government procurement laws, procedures, and policies on the development of advanced technologies within the United States and making recommendations on how Federal policy could be changed to promote further the development of advanced technologies.

(b) ISSUES.—The Commission shall address the following issues:

(1) To what extent, if any, should Federal Government technology purchase strategies be used to give domestic suppliers a competitive advantage in new generations of existing technologies and initial market penetration for new technologies?

(2) Under what conditions can Federal Government purchases of advanced technology-based products be based on performance specifications rather than on product specifications? Should Federal government procurement first look to the commercial markets for products that will meet performance specifications before purchasing a unique product that has to be developed?

(3) How can the Federal Government procurement laws, practices, and procedures be used as a strategic tool to foster the use of emerging technologies?

(4) How can the Federal Government ensure that its supplies adopt the principles embodied in the Malcolm Baldrige National Quality Award?

(5) Should Federal Government procurement practices include cooperative efforts between the supplier and the Federal entity to develop products so as to be more easily marketed on a commerical basis? Should a program for the exchange of technical personnel to foster innovation in product development be part of such practices?

(6) To what extent, if any, should Federal Government documents specify standards that are beneficial to domestic suppliers, aid the compatibility of advanced technologies, and speed the commercial acceptance of those technologies, and what would be the role of the Institute in such an effort?

(7) Should Federal Government procurement be linked to the Advanced Technology Program and to technology transfer activities so that specification development can incorporate the latest technical advances available?

(8) To what extent should worldwide, state of the art technology be required in Federal Government procurement?

(c) MEMBERSHIP AND PROCEDURES.—(1) The Commission shall be composed of 15 members, 8 of whom shall constitute a quorum.

(2) The Secretary, the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Administrator of General Services, or their designees who serve in executive level positions, shall serve as members of the Commission.

(3) The Secretary shall appoint as members of the Commission, from among individuals not employed by the Federal Government—

(A) 4 members who are eminent in advanced technology business representing manufacturing and services industries, including at least 1 member representing labor;

(B) 3 members who are eminent in the fields of technology and international economic development; and

(C) with the concurrence of the Administrator of the Office of Federal Procurement Policy, 3 members who are eminent in the field of Federal Government procurement.

(4) The Secretary shall appoint a Commission chairman from among the members of the Commission. The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act.

(5) The Secretary and the Administrator of the Office of Federal Procurement Policy shall provide such staff as may be required by the Commission to carry out its responsibilities.

(6) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission or otherwise performing duties of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(d) REPORTS.—(1) The Commission shall, within 1 year after the date of enactment of this Act, submit to the Secretary, the Administrator of the Office of Federal Procurement Policy, the President, and Congress a report containing preliminary recommendations with respect to the issues addressed under subsection (b).

(2) The Commission shall, within 2 years after the date of enactment of this Act, submit to the Secretary and Congress a final report containing final recommendations with respect to the issues addressed under subsection (b).

(e) CONSULTATION.—The Commission shall consult, as appropriate, with the National Commission on Reducing Capital Costs for Emerging Technology.

(f) TERMINATION.—The Commission shall terminate 6 months after the submission of its final report under subsection (d)(2).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992, 1993, and 1994.

SEC. 506. REPORT ON INFORMATION COLLECTION AND DISSEMINATION.

(a) REPORT.—Within 270 days after the date of enactment of this Act, the Secretary shall report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the feasibility of establishing and operating a Federal Online Information Product Catalog (FEDLINE) at the National Technical Information Service which would serve as a comprehensive inventory and authorizative register of information products and services disseminated by the Federal Government and assist agencies and the public in locating Federal Government information. Information protected from public disclosure shall not be included. In studying the concept, the Secretary, acting through the Under Secretary and the Director of the National Technical Information Service, shall consult with officials from appropriate Government agencies, including the Office of Management and Budget, the National Archives, the Government Printing Office, and the Institute, and with representatives of the public, for their views on the optimal composition and format of FEDLINE. Such report shall contain cost estimates and possible funding sources for establishing and operating FEDLINE and shall list any changes in law and regulation that would be required if FEDLINE were to be implemented.

(b) FUNDING.—The Director of the National Technical Information Service may retain and use all monies received, including receipts, revenues, and advanced payments and deposits, to fund obligations and expenses through the end of fiscal year 1993.

(c) ELECTRONIC FORMAT.—Section 212(e)(5) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(e)(5)) is amended by inserting ", including producing and disseminating information products in electronic format" after "engineering information".

SEC. 507. NATIONAL QUALITY COUNCIL.

(a) ESTABLISHMENT AND FUNCTIONS.—There is established a National Quality Council (hereafter in this section referred to as the "Council"). The functions of the Council shall be—

(1) to establish national goals and priorities for Quality performance in business, education, government, and all other sectors of the nation;

(2) to encourage and support the voluntary adoption of these goals and priorities by companies, unions, professional and business associations, coalition groups, and units of government, as well as private and nonprofit organizations;

(3) to arouse and maintain the interest of the people of the United States in quality performance, and to encourage the adoption and institution of Quality performance methods by all corporation, government agencies, and other organizations; and

(4) to conduct a White House Conference on Quality Performance in the American Workplace that would bring together in a single forum national leaders in business, labor, education, professional societies, the media, government, and politics to address Quality performance as a means of improving United States competitiveness.

(b) MEMBERSHIP.—The Council shall consist of not less than 17 nor more than 20 members, appointed by the Secretary. Members shall include—

(1) at least 2 but not more than 3 representatives from manufacturing industry;

(2) at least 2 but not more than 3 representatives from service industry;

(3) at least 2 but not more than 3 representatives from national Quality not-for-profit organizations;

(4) two representatives from education, one with expertise in elementary and secondary education, and one with expertise in post-secondary education;

(5) one representative from labor;

(6) one representative from professional societies;

(7) one representative each from local and State government;

(8) one representative from the Federal Quality Institute;

(9) one representative from the National Institute of Standards and Technology;

(10) one representative from the Department of Defense;

(11) one representative from a civilian Federal agency not otherwise represented on the Council, to be rotated among such agencies every 2 years; and

(12) one representative from the Foundation for the Malcolm Baldrige National Quality Award.

(c) TERMS.—The term of office of each member of the Council appointed under paragraphs (1) through (7) of subsection (b) shall be 2 years, except that when making the initial appointments under such paragraphs; the Secretary shall appoint not more than 50 percent of the members to 1 year terms. No member appointed under such paragraphs shall serve on the Council for more than 2 consecutive terms.

(d) CHAIRMAN AND VICE CHAIRMAN.—The Secretary shall designate one of the members initially appointed to the Council as Chairman. Thereafter, the members of the Council shall annually elect one of their number as Chairman. The members of the Council shall also annually elect one of their members as Vice Chairman. No individual shall serve as Chairman or Vice Chairman for more than 2 consecutive years.

(e) EXECUTIVE DIRECTOR AND EMPLOYEES.—The Council shall appoint and fix the compensation of an Executive Director, who shall hire and fix the compensation of such additional employees as may be necessary to assist the Council in carrying out its functions. In hiring such additional employees, the Executive Director shall ensure that no individual hired has a conflict of interest with the responsibilities of the Council.

(f) FUNDING.—There is established in the Treasury of the United States a National Quality Performance Trust Fund, into which all funds received by the Council, through private donations or otherwise, shall be deposited. Amounts in such Trust Fund shall be available to the Council, to the extent provided in advance in appropriations Acts, for the purpose of carrying out the functions of the Council under this Act.

(g) CONTRIBUTIONS.—The Council may not accept private donations from a single source in excess of $25,000 per year. Private donations from a single source in excess of $10,000 per year may be accepted by the Council only on approval of two-thirds of the Council.

(h) ANNUAL REPORT.—The Council shall annually submit to the President and the Congress a comprehensive and detailed report on—

(1) the progress in meeting the goals and priorities established by the Council;

(2) the Council's operations, activities, and financial condition;

(3) contributions to the Council from non-Federal sources;

(4) plans for the Council's operations and activities for the future; and

(5) any other information or recommendations the Council considers appropriate.

SEC. 508. STUDY OF TESTING AND CERTIFICATION.

(a) CONTRACT WITH NATIONAL RESEARCH COUNCIL.—Within 90 days after the date of enactment of this Act and within available appropriations, the Secretary shall enter into a contract with the National Research Council for a thorough review of international product testing and certification issues. The National Research Council will be asked to address the following issues and make recommendations as appropriate:

(1) The impact on United States manufacturers, testing and certification laboratories, certification organizations, and other affected bodies of the European Community's plans for testing and certification of regulated and nonregulated products of non-European origin.

(2) Ways for United States manufacturers to gain acceptance of their products in the European Community and in other foreign countries and regions.

(3) The feasibility and consequences of having mutual recognition agreements between testing and certification organizations in the United States and those of major trading partners on the accreditation of testing and certification laboratories and on quality control requirements.

(4) Information coordination regarding product acceptance and conformity assessment mechanisms between the United States and foreign governments.

(5) The appropriate Federal, State, and private roles in coordination and oversight of testing, certification, accreditation, and quality control to support national and international trade.

(b) MEMBERSHIP.—In selecting the members of the review panel, the National Research Council shall consult with and draw from, among others, laboratory accreditation organizations, Federal and State government agencies involved in testing and certification, professional societies, trade associations, small business, and labor organizations.

(c) REPORT.—A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contract with the National Research Council.

SEC. 509. REPORT ON A STRATEGY TO STIMULATE COMPETITIVE RESEARCH.

(a) IN GENERAL.—No later than 120 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report presenting a proposed strategy for improving the university research capabilities of those States which historically have received relatively little Federal research and development funding. The report shall particularly—

(1) analyze recent steps to use the National Science Foundation's Experimental Program to Stimulate Competitive Research as a model for similar programs in several other Federal departments and agencies which fund research and development; and

(2) examine the feasibility and advisability of using that program as a model for Federal research and development agencies which do not currently have similar programs.

(b) ANALYSIS AND DISCUSSION.—The report shall include an analysis and discussion of—

(1) the geographic distribution of Federal research and development grants and contracts;

(2) current Federal efforts to stimulate competitive research; and

(3) the feasibility and advisability of new Federal programs to stimulate competitive research.

SEC. 510. INTERAGENCY COORDINATION.

The Secretary shall, within 180 days after the date of enactment of this Act, submit to the Committee on Science, Space, and Technology and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a plan for coordination of Commerce Department efforts with other Federal agencies for activities related to high-resolution information systems, including research and development activities.

TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT

BRYAN AMENDMENT NO. 1460

Mr. FORD (for Mr. BRYAN) proposed an amendment to the bill (S. 1392) to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes, as follows:

On page 4, strike "or" on line 5, strike "(C)" on line 6 and insert in lieu thereof "(D)", and insert between lines 5 and 6 the following:

(C) the act or practice by a person (other than an act or practice permitted in a valid agreement with a member of a credit card system or the member's agent) of knowingly presenting to a member of a credit card system or the member's agent, for payment, one or more evidences or records received from another person of transactions involving goods or services offered by telemarketing and paid for by credit card; or

NEW YORK CITY ZEBRA MUSSEL MONITORING ACT OF 1991

GLENN (and others) Amendment No. 1461

Mr. FORD (for Mr. GLENN, for himself, Mr. KASTEN, Mr. KOHL, Mr. LEVIN, and Mr. DIXON) proposed an amendment to the bill (S. 36) entitled the "New York City Zebra Mussel Monitoring Act of 1991", as follows:

At the end of the bill, add the following section:

SEC. . EXOTIC AQUATIC ORGANISMS.

(a) IN GENERAL.—Section 1101(b) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711(b)) is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary, in consultation with the Task Force—

"(A) shall provide that the regulations issued under this subsection shall apply to vessels that carry ballast water and that, after operating on the waters beyond the exclusive economic zone, enter a United States port on the Hudson River where water is characterized as having a salinity less than 18%, and

"(B) may provide that such regulations apply to vessels operating in other rivers, canals, lakes, and waterways where discharge of ballast water could result in the introduction and spread of aquatic nuisance species into the Great Lakes."

(b) SHIPPING STUDY.—Section 1102(a)(3) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(a)(3)) is amended by striking "other than" and inserting "including".

NEZ PERCE NATIONAL HISTORICAL PARK

BUMPERS (AND CRAIG) AMENDMENT NO. 1462

Mr. FORD (for Mr. BUMPERS, for himself, and Mr. CRAIG) proposed an

amendment to the bill (H.R. 2032) to amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes; as follows:

On page 2, line 26, strike "and".

On page 3, line 1, strike "Montana;" and insert in lieu thereof: "Montana; and

(13) Hasotino Village, Idaho;".

On page 3, lines 12 through 25, strike paragraph (3) in its entirety and insert in lieu thereof:

"(3) In section 3, strike the proviso in the first sentence and insert in lieu thereof, ": *Provided*, That lands or interests therein owned by a State or a political subdivision of a State may be acquired only by donation or exchange: *Provided further*, That with respect to sites designated as components of the Nez Perce National Historical Park after November 1, 1991, no lands or interests therein, or other property, may be acquired without the consent of the owner thereof.".

ADJOURNMENT TO A DATE CERTAIN

MITCHELL AMENDMENT NO. 1463

Mr. FORD (for Mr. MITCHELL) proposed an amendment to the concurrent resolution (H. Con. Res. 260) providing for an adjournment of the Congress to a date certain; as follows:

At the end of section 2, strike the "period" and insert in lieu thereof, the following: "; and that when the Congress convenes on January 3, 1992, for the second session of the 102d Congress, the Senate shall not conduct any organizational or legislative business and when it recesses or adjourns on that day, it stand in recess or adjournment until 11:30 a.m. on Tuesday, January 21, 1992, or until noon on the second day after Members are notified to reassemble pursuant to section 3 of this concurrent resolution, whichever occurs first.".

NOTICES OF HEARINGS

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. BINGAMAN. Mr. President, I would like to announce for my colleagues and the public the following correction pertaining to upcoming field hearings before the Mineral Resources Development and Production Subcommittee of the Committee on Energy and Natural Resources.

The hearing scheduled in Bayard, NM, on December 19, 1991, has been canceled and will be rescheduled at a later date. The hearing previously announced for December 18, 1991, in Salt Lake City, UT, will proceed as scheduled. An exact time and location for the hearing will be announced.

The purpose of the hearing is to receive testimony on S. 433, the Mining Law Reform Act of 1991.

Testimony will be by invitation only. For further information, please contact Lisa Vehmas of the subcommittee staff at 202-224-7555.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session on Wednesday, November 27, 1991, at 9 a.m., to consider the nominations of Donald C. Fraser, to be Deputy Under Secretary of Defense for Acquisition; Victor H. Reis, to be Director of Defense Research and Engineering; and James R. Lilley, to be Assistant Secretary of Defense for International Security Affairs.

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

ADDITIONAL STATEMENTS

ROCKO M. FASANELLA, M.D.

• Mr. LIEBERMAN. Mr President, it is my great pleasure to bring to the attention of the Senate, Rocko M. Fasanella, M.D., medical scholar, educator, administrator, and humanitarian.

Dr. Fasanella's hard work and dedication have advanced the field of ophthalmology and saved the eyesight of countless numbers of individuals. He gives more than research results however, he also gives of himself. He devotes much of his time to sharing his expertise and experience with the community. To a man of such great humanitarian character, the world is his community.

After receiving his medical degree from Yale, Dr. Fasanella served during and following World War II as a surgeon—both on the battlefield and in general hospitals—in France and Germany. In 1951, he returned to Yale and, at 35 years of age, was appointed chief of ophthalmology at Yale-New Haven Hospital, the youngest chief of staff in the hospital's history.

Dr. Fasanella's reputation as an eye surgeon quickly received international recognition. He was a founder of the Caribbean Ophthalmological Society and is also a member of professional bodies in France, Spain, and Peru. Four of his textbooks on eye surgery have been translated into several languages including Russian and Chinese.

Dr. Fasanella's most recent efforts have focused on a more lasting cure of blepharospasm—a debilitating disease of the eye—and a continuation of research that he conducted earlier in his career on the regeneration of the optic nerve.

On December 8, the Italian-American Historical Society of Greater New Haven will pay tribute to Dr. Fasanella at its Annual Distinguished Service Award Dinner. An honor he richly deserves.

Mr. President, I hope my distinguished colleagues will join me today in rising to add our own voices to those around the world who pay tribute to Dr. Fasanella. He has demonstrated his dedication to the highest ideals of the medical profession, and his commitment to these principles serves as an inspiration to us all.•

TRIBUTE TO HENRY CAMPBELL

• Mr. McCONNELL. Mr. President, I rise today to recognize an outstanding Kentucky educator who recently retired from his 27-year post as president of one of Kentucky's most successful community colleges. Prestonsburg Community College has prospered under the leadership of Henry Campbell, thanks to his dedication to the students and the people of the Big Sandy Valley.

A familiar face is absent at Prestonsburg Community College this semester. Henry Campbell, recently retired as PCC president because of failing health. However, Mr. Campbell has more than left his mark on Prestonsburg. Under his leadership, the 2-year college has grown from a single building facility to a campus of eight buildings. According to University of Kentucky President Charles Wethington, Prestonsburg Community College probably has the longest unbroken string of enrollment growth records in Kentucky's community college system. When Mr. Campbell was hired in the early sixties, the Prestonsburg school had 325 students; today, more than 2,600 are enrolled.

Mr. Campbell's greatest pride at Prestonsburg Community College is not in its admirable enrollment statistics. He would much rather brag about individual students who have passed through the college during the past 27 years. Mr. Campbell says the real indication of how successful PCC is can be measured by its graduates. The community college has provided the initial postsecondary classrooms for lawyers, judges, teachers, nurses, doctors, and people in just about any other career field. In a recent interview, Mr. Campbell said, "One of the greatest success stories is that if I go into any hospital in this area, I'd see some of our graduates, and I have utter confidence in them."

Mr. Campbell has been described as one of the Nation's most colorful college presidents. Wethington calls him "the last of the old guard * * * someone who never gets hung up on taking himself too seriously." Except in off-campus meetings where he represents the college, Mr. Campbell never worries about wearing formal three-piece suits and ties; rumor has it that he was even mistaken for a janitor on one occasion. However, his good spiritedness and dedication transcend his style of dress, which ranges from presidential to mountaineer.

Although Henry Campbell would never accept such praise, all of the suc-

cesses of Prestonsburg Community College over the past 27 years can be attributed, at least in part, to his strong leadership. I ask that an article from the Ashland Daily Independent, be printed in the RECORD.

The article follows:

[From the Daily Independent, July 8, 1991]

RETIREE LEAVES RICH LEGACY AT 2-YEAR COLLEGE

(by Roger Alford)

PRESTONSBURG.—Henry Campbell, described as one of the nation's most colorful college presidents, has given up his 27-year reign at Prestonsburg Community College.

Campbell, a white-haired chain smoker, has reached the mandatory retirement age of 65. But he said he would have had to give up the presidency anyway because of failing health.

"In many respects, he's kind of the last of the old guard," said University of Kentucky President Charles Wethington.

"He certainly can be considered a colorful character, but he's also a president who has led that community college to probably the longest unbroken string of enrollment growth records in the system."

The two-year college has prospered under Campbell's leadership, growing from a single building to a campus of eight buildings on the northern boundary of Prestonsburg.

While many college presidents want to appear scholarly and distinguished, Campbell "never gets hung up on taking himself too seriously," Wethington said.

Except in off-campus meetings where he represents the college, Campbell never worries about wearing formal three-piece suits and ties. He has been mistaken for a janitor, said Robert Allen, academic dean at the college.

Former Gov. Bert T. Combs, said at a roast honoring the retiring president that—because of the way he dressed—he didn't expect Campbell to last three years when he was hired in 1964.

His dress varies from presidential to mountaineer.

At a recent interview, Campbell wore a blue-striped, button-up shirt, with the collar open, and suspenders to hold up his loose-fitting slacks.

Recently he attended a leadership conference wearing a Scottish kilt—and he enjoyed the notoriety of being the only man there in a knee-length pleated skirt.

The same good-spiritedness has shone through even during campus controversies—like one that arose during the Persian Gulf war.

It seemed that the American flag wasn't being flown during the first few days of Operation Desert Storm.

Students noticed, and called WSAZ-TV in Huntington, W.Va., to do a story about it. They told a television reporter that the college has taken Old Glory down because administrators feared it would offend two Iraqi instructors there.

What about this claim, the reporter asked Campbell.

"Bull," came his reply.

Campbell said the real reason the flag wasn't being flown was that a woman in the college's maintenance department who has raised the flag each day for years had undergone a hysterectomy and was unable to do it.

No one remembered to cover for her, so the flag wasn't raised.

Campbell smokes filterless Pall Malls constantly and keeps oxygen tanks in his office and home for those times when his emphysema is especially bothersome.

Besides the emphysema, an eye disease has stolen most of his vision. He doesn't see well enough to recognize friends more than 5 feet away, and he has given up driving.

The disease, hystoplasmosis, was diagnosed last fall when he was examined for new glasses and it has gotten progressively worse. By the time he received the glasses, he needed stronger lenses.

He is now legally blind and had to be chauffeured to and from work in his last months as president. A tough man, Campbell seems to take his failing health in stride.

He has suffered before, as a victim of trench foot in World War II. Both feet froze from standing in foxholes under the European command of Gen. George Patton in the 87th Infantry Division.

The routine treatment for trench foot was to amputate the feet. Campbell didn't lose his feet, but he still feels the effects of the ailment when he tries to carry heavy items.

Campbell was born in Washington state in 1925 but grew up in eastern Kentucky. His father, a coal miner, was from Pulaski County. His mother was from Pike County.

A graduate of Wheelwright High School and the University of Kentucky, Campbell earned his master's degree from New Mexico College of Agriculture and Mechanical Arts. He earned his doctorate from the University of Texas.

Debra Floyd, a college administrator from Texas, has been hired to succeed Campbell. She will be only the second president at Prestonsburg Community College when she takes over July 29.

Campbell taught high school math early in life, then moved directly into a college presidency. He has headed Crowder College in Nesho, Mo., Alamo Gordo College in Texas and helped to launch Hazard Community College.

Funding never has been adequate for Kentucky community colleges, he said. Growth has been so dramatic since the mid-1980s that the schools have been spending all available money on teachers' salaries.

When Campbell was hired to head the Prestonsburg college, it has 325 students. Now it has 2,674 students. That growth can be attributed to Campbell, Wethington said.

But the growth is not the real indication of how successful the college is. Campbell points to the more than 40 doctors who graduated there as the true measure of success.

"One of the greatest success stories is that if I go into any hospital in this area, I'd see some of our graduates," he said. "And I have utter confidence in them."

The community college has provided the initial postsecondary classrooms for lawyers, judges, teachers, nurses, people in just about any career field, Campbell said.

Allen said Campbell's primary concerns truly are for the students and the people of the Big Sandy Valley. And, he said, as a good natured leader, Campbell has won victory after victory for them in higher education.

And now Campbell boasts of having the most beautiful campus in Kentucky's community college system.

"It gives you a feeling that you've really played a part in the growth of the area," he said.•

THE SILVER MEDALLION

• Mr. BRYAN. Mr. President, I rise today in honor of our dedicated members of the U.S. Armed Forces who so courageously served in the Persian Gulf conflict. In recognition of our troops' valiant efforts and the sacrifices they endured, I have urged my colleagues to join me in supporting S. 1774 and H.R. 1107 authorizing the creation of a silver medallion to be given to U.S. military personnel who served in combat zones in the Persian Gulf conflict. Since its introduction, this silver medallion legislation has received strong support and has been incorporated with other worthy commemorative measures into H.R. 3337. I am certainly pleased by the favorable reception and strong support the silver medal for Persian Gulf veterans and H.R. 3337 have received.

I must commend my friend Congressman LAROCCO of Idaho for his tireless efforts in support of this measure commemorating our troops. His leadership on the Subcommittee of the House Banking, Finance and Urban Affairs Committee has been instrumental in paving the way for this worthy piece of legislation.

The Silver Congressional Medal for Persian Gulf veterans authorizes the Secretary of the Treasury to design and strike a silver medal for eligible members of the Armed Forces, and authorizes the striking of a bronze replica medallion for sale to the public. The striking of the silver medallions will be at no cost to the taxpayers, as proceeds from the sales of the publicly sold bronze replicas would fund the minting of the silver congressional medallions for our troops.

Mr. President, earlier this year Congress authorized gold medals for Generals Powell and Schwarzkopf. Having recognized these two great generals, it is only fitting that we pay similar respects to the troops who served under them in the Persian Gulf. This legislation will authorize a silver medallion for the military men and women without whom the efforts of our generals could not have succeeded.

Operations Desert Shield and Desert Storm confirmed the U.S. military to be the best trained, best equipped, most fully capable Armed Forces in the world. The American men and women who performed in the Persian Gulf served their country well and made us proud. However, the sacrifices they endured were many and must not be forgotten. Indeed Mr. President, 141 Americans were killed in the gulf conflict, paying the ultimate sacrifice to their country, and another 357 were wounded in action. The long, exhausting hours in unfamiliar desert battle conditions, the trying period away from family and loved ones, and the ultimate sacrifice paid by our fallen and casualties deserve our acknowledgment.

Mr. President, the men and women of our Armed Forces are deserving of recognition and honor for their gallant efforts in the Persian Gulf conflict. The offering of a commemorative silver medallion is one small way of demonstrating our national gratitude for their courageous service.•

TRIBUTE TO MARY HELEN BYCK

• Mr. McCONNELL. Mr. President, I rise today in memory of a remarkable woman whose energy and ideas enriched the cultural, educational, and civic life in Kentucky's largest city for 6 decades. Mary Helen Byck died after a lengthy illness in July. However, throughout most of her lifetime her name was synonymous with community giving in Louisville, and her contributions will be remembered for decades to come.

Mary Helen Byck was chairman of the board of Byck's department stores, a family-owned business that began as a shoe store in 1902. Although she'll be missed by the business community, Mrs. Byck was best known for her civic contributions which covered an extraordinary range of interests.

Mrs. Byck was extremely dedicated to improving health care in the Louisville area. She sponsored a pediatric residency program at the University of Louisville School of Medicine, was a board member of the Louisville Medical Research Foundation for Physicians and Researchers, and served as vice president of the Regional Cancer Center Corp. Mrs. Byck worked relentlessly to improve cancer treatment. She was a member of the board of governors of the Brown Cancer Center; officials at the center plan to dedicate a new patient-education area in her honor.

Mrs. Byck also took an active role in furthering the cultural offerings of the Louisville area. She helped found the Louisville Philharmonic Orchestra in 1987, and was a major force behind the Greater Louisville Fund for the Arts. She was instrumental in developing Actors Theatre, and was a leader in the effort to create the Kentucky Center for the Arts in 1983.

Mrs. Byck devoted much of her time to civil rights issues. She was an original member of the Kentucky Human Rights Commission, and served on the Louisville-Jefferson County Urban Renewal Commission. She was also a major force behind the 1966 passage of the Kentucky civil rights law.

For more than a quarter of a century, Mary Helen Byck was a driving force in business, the arts, humanitarian causes, and health care in Jefferson County. Those of us who knew her also know that she always attempted to downplay her accomplishments. In a 1982 interview, Mrs. Byck said, "I don't want to be glorified * * * I've been very blessed in life to be able to do what I've done." With her passing, the Louisville community has lost not only a leader, but a dear friend. I ask that an article from the Louisville Courier-Journal be printed in the RECORD.

The article follows.

MARY HELEN BYCK: 1907-1991—Retail Clothier Whose Work Enriched City Dies at Age 84

(By Holly Holland and Helm)

Mary Helen Byck, the retail clothier whose energies and ideas enriched Louisville's cultural, educational and civic life through six decades, died at her home yesterday after a lengthy illness. She was 84.

Byck, who was diagnosed with inoperable lung cancer a year ago, slipped into a coma two days ago and died quietly at 2:40 p.m., said her daughter, Betty Goodman.

Goodman said her mother had had radiation treatment last summer and seemed to rebound. But after returning from a trip to California in March, Byck contracted bronchitis and "couldn't throw it off," Goodman said. She said her mother had been bedridden for about two months.

Goodman said Byck's other daughter, Lucy Shapero, and a granddaughter, Cathy Dreszer, were with her when she died at her home at 332 Penruth Ave. in the Crescent Hill neighborhood.

Byck was chairman of the board of Byck's, a family enterprise that was founded as a shoe store in 1902 and later operated women's apparel stores in Louisville and Lexington. The last three stores, which were in Louisville, closed Tuesday.

Goodman said the timing of the company's closing and her mother's death were coincidental.

"It just happened that way," Goodman said. "This has been a pretty emotional week."

Friends and colleagues expressed sadness at the passing of a woman whose name had become nearly synonymous with community giving.

"You don't ever replace someone like this," said Wilson Wyatt Sr., who led the effort with Byck to start the J. Graham Brown Cancer Center. "She was never one to simply advise others what they should do. It was always what we should do. * * *"

Buddy Thompson, chairman of Glenmore Distilleries Co. and chairman of the Brown Cancer Center's board, said it was ironic that cancer killed a woman who had done so much to improve cancer treatment for the entire community. Thompson said he wrote Byck last month informing her that the cancer center planned to dedicate a new patient-education area in her honor.

Byck's contributions to the community covered an extraordinary range of interests.

During World War II, when it was rare for a woman to be an executive, she served as president of Byck's while her husband, Dann Byck Sr., served his country. She was described then as "one of the best merchant people in this city." She became president of Byck's again when her husband died in 1960.

Byck enjoyed hunting, fishing and golfing, and she wore a red jacket to University of Louisville basketball games until ill health kept her home.

Byck grew up in downtown Louisville, the only daughter of Mr. and Mrs. Cyrus Adler. She and Dann Byck were married June 27, 1931, the day before her 24th birthday.

Her public commitments were both exciting and exacting for her three children. Goodman said it was sometimes difficult to grow up in her mother's shadow.

"As little kids it was just fascinating, meeting interesting people," Goodman said. "As we got older it was an effort to establish our own identify because people assumed that you did and felt everything that both parents did and felt. It was difficult establishing our own place."

Byck was a member and chairman of the U of L Board of Overseers and for five years sponsored a pediatric residency program at the U of L School of Medicine. She was a board member of the Louisville Medical Research Foundation for physicians and researchers. She was vice president of the Regional Cancer Center Corp. and a member of the board of governors of the Brown Cancer Center.

Byck was longtime chairman of the Louisville Gardens board of directors, and the Garden's arena was named in her honor.

Byck helped found the Louisville Philharmonic Orchestra in 1937. And she was a major force behind the Greater Louisville Fund for the Arts, and having Actors Theatre included. She was a leader in the effort to create the Kentucky Center for the Arts in 1983.

Byck also was an original member of the Kentucky Human Rights Commission, and she served on the Louisville-Jefferson County Urban Renewal Commission. She helped establish the Park DuValle Community Health Center, financed the first Planned Parenthood Center for black Louisvillians and was one of the Southwick Youth Club's largest financial backers.

"The civil rights movement she supported, the feminist movement she supported, all of the things associated with liberal causes," said Woodford Porter Sr., past chairman of the U of L board of trustees.

Byck's ran a newspaper ad supporting open housing, and Byck was instrumental in the passage of the 1966 Kentucky Civil Rights Law, which had failed two years earlier.

"Anyone that needed any help, why they'd call (Byck), especially in the minority community," said Katherine Peden, an industrial consultant and former state commerce commissioner who had been friends with Byck for about 30 years.

"She was always speaking out for young people to become more vocal in the political process," Jefferson County Judge-Executive Dave Armstrong said.

Louisville Mayor Jerry Abramson said, "There are very few things in this community that are good that she has not played a role into bringing into existence."

A 1928 graduate of Vassar College, Byck took a job in 1930 with the national convention of the League of Women Voters, beginning a productive stint in politics. She was Democratic national committeewoman from Kentucky in 1964, served on the Democratic State Central Executive Committee and worked for the party on the local level for many years.

In 1982 she helped lead the county schools' unsuccessful drive for a tax increase and later said, "When you fail in something you've worked hard on, stop, get your breath, review what has happened and start all over again. Get your strength up if you believe it's right."

Asked about her accomplishments in a 1982 interview, Byck said: "I don't want to be glorified. * * * I've been very blessed in life to be able to do what I've done. I'll get it all back."

Survivors in addition to her daughters include a son, Dann C. Byck Jr. of Los Angeles; nine grandchildren; and five great-grandchildren.

MARY HELEN BYCK * * *

Mary Helen Byck was, quite simply, one of Louisville's great citizens. For more than a half century she was a key force in business, the arts, humanitarian causes and health care in a city that sorely needed the kind of enlightened leadership she provided.

Though she had been in declining health for some time, there was a Dickensian aura about the timing of her passing, one day after the Byck's stores in Louisville closed. (See editorial, below.)

Her association with that business, over which she presided during World War II and again after the death of her husband, Dann C. Byck Sr., in 1960, was only one facet of a life that a friend once compared to a fine diamond. She was keenly interested in public affairs, especially Democratic Party politics. An original member of the Kentucky Commission on Human Rights, she was a firm supporter of open housing and equal rights for all.

She was instrumental in the building of the J. Graham Brown Cancer Center at the University of Louisville and the Park-DuValle Health Center. She and her husband—who was president of the Board of Aldermen from 1947 to 1953—were founders of the Louisville Orchestra in 1937, and she was among the key figures in the endowment campaign that led to the construction of the Kentucky Center for the Arts.

That was the public side of this remarkable woman. But there was a private side, too, that was able to make anyone she met feel at ease, who delighted in her children and grandchildren and who was never one to flaunt her success or power. It was the side that offered encouragement to cancer patients after her store became one of the first to carry breast prosthesis products, in an era when many only whispered about cancer.

And it was the side that could confide how important friends were to her: She once told a young acquaintance how moved she was by a note of condolence written upon the death of an old friend. You see, Mrs. Byck explained, at such times the family gets all the attention, but they do not grieve alone.

With Mary Helen Byck's death, many of us share the sentiment she expressed that day, for the community has lost not only a leader, but a dear friend.

* * * AND HER STORE

Byck's: a name so long respected in this city that it's hard to imagine that the stores that bore its name have closed.

It was a name associated with quality—sleek leather, fragrant perfumes, chic dresses, stylish shoes and Easter bonnets. Generations of Louisville children waited countless hours while their mothers tried on dresses or hats or shoes at Byck's. Children also were fitted for shoes there with the kind of attention appropriate for a business that had started as a shoe store.

More than a few of us can remember the last-minute shopping dash to pick up a Christmas or birthday present—knowing that Byck's would have the perfect thing. And the pink boxes with silver ribbon were always a sign that a gift of quality was inside.

Like the people who owned the store, there was a progressive quality aout Byck's. Although the downtown branch was the anchor, suburban branches, beginning with the one in St. Matthews, symbolized the change in shopping patterns in Lousiville beginning in the 1950s.

Keeping a family-owned business alive isn't easy. And as Steve Goodman, Mrs. Byck's son-in-law and the current president of the company, noted, these are very difficult times for retail stores. The ghosts along Fourth Avenue are too plentful, names—like Stewart's, Selman's, Kaufman's, Sutcliffe's and Levy Bros.—that we used to take for granted are gone. And now, sadly, Byck's joins the list.●

LETTER FROM THE MAYOR OF KRAKOW TO VICE PRESIDENT DAN QUAYLE

● Mr. COATS. Mr. President, I urge my colleagues to take the time to read a letter, which I am submitting for the RECORD, from Tadeusz Piekarz, the mayor of Krakow, Poland, to Vice President DAN QUAYLE. As the mayor explains, the Bush administration, Vice President QUAYLE, and the United States Congress can all take pride in assisting Poland to deal with its very substantial environmental problems. With a small investment of funds, the United States is helping the citizens of Krakow to assess and deal with the ecological mess left behind after four decades of Communist mismanagement and neglect.

Mr. President, I ask that the letter from the mayor of Krakow to Vice President DAN QUAYLE be printed in the RECORD.

The letter follows:

DEAR MR. VICE PRESIDENT, I would like you to accept our deepest thanks to the Congress of United States for undertaking the decision allocating funds to Krakow for environmental protection. I am doing the above full of gratitude for the funds granted and emboldened by our meeting in Krakow during the CSCE Conference in June. Could you kindly pass these words of thanks to the American people.

The assistance executed thanks to the decision of the Congress, functioning under your guidance, creates a significant contribution to the environment of Krakow where—among other things—in 1794 Tadeusz Kosciuszko took an oath to the Polish nation, fighting for independence and democracy. Later he continued to serve both our countries. It is symbolic that it is here, close to the place commemorating his oath, where we are opening today one of the automatic air-monitoring stations which would enable us to measure the exact level of air pollution in Krakow.

I would like to express my sincere hope that the American assistance will develop into a partnership becoming an example for the other nations of the Eastern and Central Europe.

I remain sincerely yours,

TADEUSZ PIEKARZ.●

NATIONAL HISTORIC PRESERVATION

● Mr. ROBB. Mr. President, this year marks the 25th anniversary of the National Historic Preservation Act, the law that defined the national preservation program. Congress passed, and President Johnson signed, this law in large part because of a report of the U.S. Conference of Mayors, called "With Heritage So Rich." This report is probably best remembered for its visionary call to save the fabric of everyday life, not just the occasional mansion. It is also known for setting out what a national preservation program would look like. Congress took the advice of this report and today's preservation program is remarkably similar to that recommended in "With Heritage So Rich."

I know a little about this book because my mother-in-law Lady Bird Johnson wrote the foreword. She talked about how she had learned the truth that the buildings which express our national heritage are not simply interesting. They give a sense of continuity and of heightened reality to our thinking about the whole meaning of the American past. She also urged that:

> We must preserve and we must preserve wisely. As the report emphasizes, in its best sense preservation does not mean merely the setting aside of thousands of buildings as museum pieces. It means retaining the culturally valuable structures as useful objects: a home in which human beings live, a building in the service of some commercial or community purpose. Such preservation insures structural integrity, relates the preserved object to the life of the people around it, and, not least, it makes preservation a source of positive financial gain rather than another expense.

The Commonwealth of Virginia is, of course, one of the Nation's most historic States, with resources from the historic mansions of the Founding Fathers to the small towns settled along railroad routes, to old farmsteads, to historic urban commercial centers and neighborhoods.

Virginia has one of the Nation's finest historic preservation programs; Bryan Mitchell, Virginia's State historic preservation officer, is now the president of the National Conference of State Historic Preservation Officers. The office carries out some of the most important mandates of the National Historic Preservation Act, namely documenting the State's significant historic structures and districts, working with governmental agencies to see that federally assisted projects do not unnecessarily harm these historic places, and certifying the quality of historic rehabilitation projects which use the Federal historic rehabilitation tax credit.

This is precisely the work plan set out in "With Heritage So Rich." Continuing to do more and better to preserve historic places is the mandate for the next 25 years.●

CANYON PROTECTION—A NATIONAL DISGRACE

● Mr MCCAIN. Mr. President, in just a few hours Congress will adjourn. With great disappointment and frustration I inform my colleagues that apparently we will do so without passing needed legislation to protect the greatest natural wonder in the world—the Grand Canyon.

The Grand Canyon Protection Act, which I introduced at the beginning of the 102d Congress, continues to languish in committee where it is held hostage to competing agendas and institutional roadblocks.

It strikes me as somewhat ironic that practically every day around here,

Senators take the floor of the Senate to orate on the importance of the environment. Great speeches are delivered about our natural heritage. Heads nod in righteous agreement. But when it comes right down to it, we can't even pass a bill—one which has been agreed to by the affected parties—to take care of our most spectacular natural resource.

It's no wonder the American people are so skeptical of Congress, and the ability of this institution to conduct our national affairs.

I first introduced the Grand Canyon Protection Act in the 101st Congress. I did so in response to a Department of the Interior report that Grand Canyon resources have been harmed by operations at Glen Canyon Dam.

As you can imagine, the question of how the dam is operated affects a number of interests, including downstream resources, water management and power generation. Measures calling for change in the status quo can provoke serious controversy. However, the need to protect the Grand Canyon demanded action.

Accordingly, in August 1990, I convened a meeting of the affected constituencies with the challenge of producing a consensus bill—one that would provide full protection for our park resources. Those meetings were fruitful and produced a consensus which was embodied in the Grand Canyon Protection Act.

Last year, after hearings in both the House and the Senate, the Energy Committee approved the bill and inserted it into an omnibus reclamation package. The Senate approved the measure in the waning hours of the 101st Congress. However, because of controversy over titles which had nothing to do with the Grand Canyon, the legislation was killed, and Congress adjourned before the bill could be enacted.

Disappointed but determined, I reintroduced the bill as soon as the 102d Congress convened. I was confident that it would be acted upon expeditiously considering the importance of the issue and the fact that the Senate had approved the measure just a short time before.

I thought surely the Senate would not hold up protection for the Grand Canyon. Certainly, the bill could not be held hostage again by linking it with other more controversial legislation.

Those expections, however, were dashed when it was announced that, once again, Grand Canyon protection would be tied to a large reclamation projects bill. I argued that the Grand Canyon bill was a park protection measure, not a water project, and it should be allowed to pass on its merits. I was told my worries were misplaced and assured the bill would be acted upon by the end of spring. Well, spring came and went. No action was taken.

Concerned about the delay, I visited the chairman of the Water and Power Subcommittee. Once again, I was assured—this time that the bill would pass before the August recess or shortly thereafter. The summer turned to fall. Still, no action was taken on the bill.

Finally on September 13, seeing that an entire year was slipping away without action, I offered the Grand Canyon Protection Act as an amendment to the Interior appropriations bill. I did not relish asking the Senate to legislate on a spending bill, but protecting the Grand Canyon was more important than rigid adherence to instutional procedures.

A lengthy debate ensued. Senators came to the floor and spoke out on the importance of Grand Canyon National Park and our need to protect its invaluable resources.

But I was told that adding the bill as an amendment was not the right way to go. The distinguished chairman of the Water and Power Subcommittee, for whom I have great respect and admiration, argued against the amendment because, he assured the Senate, the committee was poised for action. He indicated that I was impatient, unable "to wait a few weeks," and trying to end run the committee. The amendment was defeated on procedural grounds.

Mr. President, I was skeptical about these new assurances. I had good reason to be. The year was littered by timelines come and gone, with assurances and reassurances. But I hoped fervently that the committee would fulfill its commitment.

Mr. President, with sadnesss and regret I inform the Senate that the commitment has not been kept.

I point no fingers and I cast no blame on any individual Senator. I can understand the complications and competing agendas of the committee process. They can frustrate the best of intentions. But, good intentions are not enough. The American people should be outraged that another session of Congress has slipped away without action. They would expect that the interests of the Grand Canyon—one of the seven wonders of the world—would motivate and move Congress to act with dispatch and resolve. But, no, it's business as usual.

Mr. President, let no one be mistaken. This legislation is critical. The scientific data is clear. The operation of Glen Canyon Dam has adversely impacted natural, cultural and recreational resources within the Grand Canyon. Over half of the Colorado River beaches which existed prior to construction of the dam have vanished. Archeological sites have been destroyed. Native fish species and recreation have been adversely impacted—all within our Nation's premiere natural treasure.

The good news is that changes in dam operations, and perhaps other reasonable measures, can be implemented to halt this damage.

The Grand Canyon Protection Act would statutorily require those changes to be made and establish a permanent standard of Canyon protection in law.

That's why I submit that this legislation is urgently needed. That's why practically every conservation organization in the Nation believes that it's urgent.

I would like to reiterate, the Grand Canyon Protection Act is not draconian legislation. Glen Canyon Dam will continue to supply abundant and economical electrical power. It will continue to provide water critical to the region.

The bill will merely ensure that our constructive use of one resource will not become an abuse of another—particularly the Grand Canyon. It's worth repeating that the affected parties agree this is the right thing to do, including the conservation community, the Colorado River Basin water authorities, and regional public power officials.

The essence of what this issue is all about was best described by former Secretary of the Interior Stewart Udall when he wrote the following:

> Because the hand of man now controls the flow of water through the . . . Grand Canyon, Congress, acting for the American people, has a responsibility to ensure that our hand is guided firmly by the ethics of stewardship . . . We must conserve and protect those resources and values that caused Congress to designate the Grand Canyon as a national park and to make its special qualities available to the American people for all time.

Profound and compelling words, indeed.

This year we celebrate the 75th anniversary of the National Park Service. It's a travesty that the Senate has chosen to leave the protection of our flagship national park for another day.

I'm sure we will hear that the committee intends to bring the measure up early next year. We are left to ponder past experience and wonder whether next year will slip away as well under cover of good intentions and placating assurances. I cannot and will not allow that to happen. I want my colleagues to know that I will be on the floor the day we reconvene and every day thereafter if necessary to see that we meet our responsibility to pass the Grand Canyon Protection Act and end this national disgrace.●

CONGRATULATION TO THE 2D BATTALION, 222D FIELD ARTILLERY

● Mr. GARN. Mr. President, I rise today to offer my congratulations to the 2d Battalion, 222d Field Artillery, located in Cedar City, UT, for receiving the Walter T. Kerwin Readiness Award.

I am very proud of this fine group of men and women. This trophy is awarded each year to the most "combat ready" unit of the National Guard for the entire Nation. Not only has the 2d Battalion demonstrated outstanding capabilities for combat readiness, but this is the second time they have won the prestigious Kerwin Award, the last time being in 1984. It is a distinct honor for them and for the State of Utah.

The 2d Battalion from Cedar City has had a long and distinguished career. It began as an outgrowth of the Nauvoo Legion, organized on February 3, 1844, by Mormon pioneers in the State of Illinois. It has seen service in the Mexican War, the Civil War, World Wars I and II, and the Korean war for which it received a Presidential Unit Citation. The battalion has been honored with numerous other awards including the Milton A. Reckord Trophy in 1984, 1986, and 1990 for outstanding battalion unit size in the 6th Army area; and the Eisenhower Trophy Award, 1989, for the best company size unit in the State of Utah.

Today, the battalion is commanded by Lt. Col. Mark Fuellenbach. He and the battalion are a shining example of the National Guard at its best. I am very proud to have such a distinguished, capable and well-trained unit in the State of Utah.

I am sure my colleagues will join me in commending Lieutenant Colonel Fuellenbach, each member of the 2d Battalion of the 222d Field Artillery, and the individual families who support them, for their noteworthy and dedicated service to the United States of America.•

SUSPENSION OF WITHDRAWAL OF UNITED STATES TROOPS FROM KOREA

• Mr. BUMPERS. Mr. President, I rise today to speak about the recent announcement by Defense Secretary Cheney that we are suspending phase 2 of our plans to reduce United States troop levels in South Korea because of the growing concern over the developing North Korean nuclear threat. As the Members of this body know, I have been very outspoken over the last few years in my belief that the United States should reduce its troop deployment level in Korea and allow South Korea to shoulder a greater share of the responsibility of defending itself. South Korea has twice the population of North Korea, and a GNP that is over 10 times larger. They are fully capable of defending themselves, and our presence could be safely reduced to a lower, though still significant, level.

Last August, the Senate agreed to my amendment calling on the Department of Defense to consider further reductions in United States force levels in South Korea. I ask that the text of this amendment, No. 1061, be inserted in the RECORD at the conclusion of my remarks.

Despite this background, I am supporting Secretary Cheney's decision to delay, at least for a while, because the North Koreans are capable of anything, and their nuclear development program is worrisome. But we should be clear in our own minds why we are delaying this troop reduction, and not hesitate to resume it, indeed to accelerate it, once the reason for the suspension has gone away. And we should press harder to get the South Koreans to pay a greater share of the $2.5 billion cost to maintain the United States troop presence.

The rationale for suspending the troop withdrawals is solely to put pressure on the North Koreans, to serve as both a carrot and a stick, to encourage them to comply fully with the Nuclear Nonproliferation Treaty and agree to full International Atomic Energy Agency [IAEA] inspections of their nuclear facilities. When this is achieved, there will no longer be any credible reason to delay major drawdowns of United States force levels on the Korean peninsula.

It has been widely reported in the press that the United States is now removing its nuclear weapons from South Korea. If these reports are correct, I believe we are doing the right thing. By this action, we are taking away the flimsy excuse that the North Koreans have used for years as an excuse not to open their nuclear facilities to international inspection. For many years, it was North Korea who called for the Korean peninsula to be a nuclear free zone, and who denounced the United States for thwarting this goal.

Now we have wisely turned the tables on North Korea. South Korea is nuclear free, and it is North Korea that is threatening to nuclearize the Korean peninsula. And fortunately the rest of the world sees this hypocrisy, especially the Japanese, who hardly relish the thought of a nuclear North Korea. As one Japanese diplomat explained: "Remember, you Americans have nuclear weapons. We don't.

I congratulate President Bush, Secretary Cheney, and Secretary Baker for turning up the diplomatic and military heat on the Kim-Il-Sung regime to come clean on its nuclear activities. At the same time, I encourage them to keep this effort up. I note that the United States has met quietly with North Korean diplomatic representatives 17 times since late 1988 to discuss issues of mutual interest and according to reports in the press this morning, it seems to be paying off. I encourage President Bush to use these meetings and other means to underscore to the North Koreans that they will not achieve the security they seek if they keep with their current policies.

We have too recently seen in Iraq that it is possible for a country to be further along the road to acquiring a nuclear weapons capability than external evidence would suggest, and that older, out-of-date technologies can still be utilized by technologically less sophisticated countries to provide the means for developing a nuclear weapon. After all, technology that today is over 45 years old permitted the United States to develop atomic weapons. And I hope the Bush administration is hard at work making sure that the European and other companies that were helping Iraq develop its nuclear weapons are not now working for the North Koreans.

In this light, I am disturbed by a report in Germany's Der Speigel magazine that German companies are involved in North Korea's nuclear weapons program. I ask that a copy of "German Help for Korea's Bomb" from the November 4, 1991, issue of Der Spiegel be placed in the RECORD immediately following my remarks.

And it is distressing to read that China has thrown a monkey wrench into Secretary Baker's diplomatic initiative to have Asia's leading powers join together to pressure North Korea to abandon their attempts to develop nuclear weapons. Once again, the diplomatic benefits that the Bush administration promised in return for our treating the hardliners in Beijing with kid gloves despite the Tiananmen Square massacre have eluded us. China must recognize that it is in their own best interest to join with others to halt the threat of North Korean nuclear wepons.

I urge President Bush to take appropriate and forceful steps to deal with these serious concerns.

I want to emphasize that I believe that relations between the United States and the Republic of Korea are very good, and I am pleased about that. Our two countries are allies. We are also friends. We share many common economic, political, and security concerns. However, our policy toward Korea seems mired in the mists of the world of four decades past.

We have had about 43,000 troops in South Korea for a number of years, a figure that has actually grown from the 33,000 level of 10 years ago. Under the plan announced in early 1990, U.S. troop levels were supposed to reach 36,000 by the end of 1992. There had been hints in the Korean press that the second phase of reductions would reduce a further 6,000 troops, to 30,000, by the end of 1995. It is this reduction that has been delayed. Of course, if the North Koreans revise their nuclear policy and allow inspections, there need not be any delay at all.

Despite my support for the temporary delay in reducing our troop levels, let us remind ourselves that the arguments in favor of such reductions remain valid. Our current troop levels are higher than they were a decade

ago. We are acting as if South Korea is a very weak country needing a large United States military presence to protect them from a more powerful neighbor. And that was true in the fifties and probably the sixties. But it certainly is not true today.

South Korea has twice as large a population as the North. Its economy is 10 times as large, and it is growing 3 to 4 times as fast as the north. It has grown to such a point that the amount by which South Korea's economy grows each year is equal to the entire size of the North Korean economy. Last year, South Korea's economy grew by about 9 percent, while the Wall Street Journal reports that North Korea's economy shrank by 4 percent. On a per capita basis, the fall was more than 5 percent. In addition, North Korean grain production fell 12 percent last year, according to the Korea Times, and is now 25 percent below the level needed to feed themselves.

Economic prospects for North Korea are bleak—the Soviet Union has been their major trading partner, and the collapse of the Soviet economy means the North Korean economy will probably shrink more, while the South Korean economy remains an economic powerhouse. And I salute them for their success. Of course, they should open their markets to more imports—their current trade barriers are serious. But they have done well.

Sadly, South Korea seems not to fully realize its economic strength. Keeping trade barriers up is one aspect of this. But another is how they address their security situation. South Korea rightly warns of North Korea's strengths, but they seem unwilling to do more to defend themselves. They spend a smaller share of their GNP on defense than we do, 4.2 percent versus 4.9 percent for us. They could do more, but they don't. We shouldn't be a party to them having it both ways. They can't warn how terrible the North Korean threat is, and then turn around and devote less of their economy to defense than we.

A graphic example of this is South Korea's decision in September to stop conscripting short-term soldiers and to shorten the military service term of regular service people by 2 to 5 months beginning in early 1993. I ask that the article "Military Service Term to be Cut by 2 to 5 Months" from the September 14, 1991, Korea Newsreview be placed in the RECORD at the conclusion of my remarks. It is estimated that cost savings is one of the reasons for this cut, as well as the desire to increase the size of the labor pool to satisfy the labor requirements of South Korea's booming economy.

The United States should maintain a presence in South Korea as long as the South Koreans want us, but it doesn't need to be as large as it is. And it should end at some point. General Menetrey, former head of Allied forces in South Korea, said in 1989 that he thought the mid-1990's would be about right if current trends continued. With the exception of the nuclear threat, which justifies the temporary delay, these trends have continued, and become even stronger.

By deciding to reduce our troop levels to 36,000 in South Korea, we have made some progress, but not nearly enough. Once we have resolved the North Korean nuclear problem, we should at a minimum put the Phase II reductions down to 30,000 personnel back into effect. My preference would be to go further, and reduce troop levels down to closer to 10,000 to 15,000 troops.

Mr. President, there is one area that doesn't have to wait for the resolution of the North Korean nuclear problem for us to act. And that is in the area of the level of host nation support that South Korea provides us. South Korea doesn't come close to matching the level of host nation support provided by Japan. Even with the increase to $430 million, which is about $10,000 per troop, South Korea lags far behind Japan, which supports our forces at over $50,000 per troop. And the cost of our presence is about $2.5 billion per year, far more than we receive. At a minimum, South Korea can do much better with its level of host nation support. If South Korea paid for the same fraction of troop costs as Japan does, this would add about $750 million to their level of support and would cut our deficit by a like amount.

If we can take on the extra financial burden of delaying troop reductions for South Korea, the least the South Koreans can do after reducing their armed force levels to save money is kick in more to support our troops.

Let's look at the geopolitical situation on the Korean peninsula. Almost everyone agrees that North Korea would need major assistance to invade the South. That means the Soviet Union or China. But the Soviets have greatly improved relations with the South Koreans. For the first time in decades, they have diplomatic relations. They are angling for economic aid from South Korea, which as we all know, they sorely need. The Soviets have supported South Korea's entry into the United Nations. In addition, there are press reports that the Soviets have cut off the transfer of offensive weapons to North Korea, "causing confusion in Pyongyang's military planning," according to the International Herald Tribune. So the Soviet Union, or what is left of it, is hardly a candidate for backing North Korean aggression.

China's relations with South Korea are better than ever, for economic and political reasons. In fact, the Korean media reports that the South Koreans are discussing normalizing relations with China. Neither the Soviet Union nor China is going to help North Korea invade the South. The only reason for worry is the North Korean nuclear weapons program. When that problem is resolved, we can safely reduce our troops. In fact, it would be unsafe for us to keep such a high level of troops there.

We pay a political price for keeping our troops in South Korea. Our troop presence creates social problems in the communities in South Korea where they are located. A while back there were street fights that led to U.S. troops facing off-limits restrictions for several months. There are other tensions as well, as exemplified by an editorial in a Seoul paper, which claimed that the United States presence provides the "means of dominating South Korea's political, economic, military, and cultural fields." Of course this isn't true, but our excessive presence there feeds such mistaken beliefs.

A poll taken in August in Korea found that 32 percent of South Koreans believe the United States should withdraw its forces whether or not Korea is reunified, up from 20 percent in 1989. And 34 percent said United States forces should only remain as long as the Koreas are divided. The poll also showed that the younger people, the future of Korea, are less supportive of the United States presence than their elders.

In conclusion, I encourage President Bush to do all he can to resolve the North Korean nuclear problem, and to get South Korea to do more in their own defense. Let me repeat, South Korea and the United States are good friends, and I hope we will remain that way. But I believe that South Korea needs to more fully recognize its growing role in the community of free nations, and part of that includes shouldering a greater share of the burden of their own defense.

The material follows:

The amendment is as follows:

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

SEC. . U.S. TROOPS IN KOREA.

A. Congress finds that:

(1) The Department of Defense plans to reduce the United States troop presence in the Republic of Korea to 36,500 personnel by the end of 1992.

(2) The Department has announced no specific plans for further personnel reductions below that level.

(3) The National Unification Board of South Korea estimates the GNP of North Korea to have been $21 billion in 1989, while the Bank of Korea estimates the economy of the Republic of Korea's economy to have been $210 billion in 1989, a factor of ten larger. At its current growth rate, as estimated by its Economic Planning Board, just the annual expansion of the economy of the Republic of Korea is nearly equivalent in size to the entire North Korea economy.

(4) The Republic of Korea faces a substantial military threat from North Korea that requires a vigorous response on both military and diplomatic levels.

(5) The Republic of Korea has decided to increase its level of host nation support, although such support still falls short of the actual cost involved, and short of the relative level provided by the government of Japan.

(6) While recognizing that the Republic of Korea has consistently increased its defense budget in real terms by an average of about 6 percent annually for the past five years, at 4.2 percent of GNP, the Republic of Korea devotes a smaller share of its economy to defense than does the United States, at 4.9 percent.

B. It is the sense of the Senate that:

(1) The Republic of Korea remains an important ally of the United States, with the two countries sharing important political, economic, and security interests.

(2) Commensurate with the security situation on the Korean peninsula and the size and vitality of the economy of the Republic of Korea:

(a) the Department of Defense should seriously consider future reductions of United States military personnel from the Republic of Korea beyond those now planned to be completed by the end of 1992.

(b) the Republic of Korea should undertake greater efforts to meet its security requirements, particularly in the area of force modernization.

(3) The Government of the Republic of Korea should increase the level of host nation support it provides to United States forces in the area so that its relative level more closely approximates that of Japan.

C. The President shall report to Congress, either separately or as part of another relevant report, on or before June 30, 1992, in both classified and unclassified form, on the overall security situation on the Korean peninsula, the implications of relevant political and economic developments in the area for the security situation there, and United States policy for the area. Issues covered in the report should include, but not be limited to, a qualitative and quantitative assessment of the military balance on the Korean peninsula, the material requirements of the Republic of Korea, United States military personnel requirements, the state of United States-ROK, China-ROK, and Soviet-ROK relations, and prospects for change within North Korea.

HELP FOR IRAN'S, NORTH KOREA'S NUCLEAR PROGRAMS

[Unattributed report: "German Help for Korea's Bomb"]

[Text] According to information from the Federal Intelligence Service (BND), German enterprises also are involved in the construction of nuclear weapons in North Korea. In a report to the Chancellor's Office dated 23 October (file number: 30-31c-0326-91), BND President Konrad Porzner writes that relevant hints from the U.S. Secret Service are to be taken seriously. However, only one suspicious company is known to the intelligence service in Pullach: The Berlin firm Leis Engineering GmbH supplied silicium alloyed steel—a material that is excellently suited for the construction of containers for radioactive materials—to North Korea.

The Director of the company, Guenther Leis, confirmed the delivery of so-called Nicroter sheet metal to Pyongyang. Reportedly, the sheet produced by the Duisburg VDM Nickel Technology Company (order volume: 100,000 German marks) had been sent to North Korea as parts for the repair and expansion of a fertilizer factory at the end of last year and the beginning of this year. The sheet metal business passed a customs examination in the middle of this year, it is stated.

Together with enterprises of the ex-GDR, North Korean companies also tried to dodge the barriers of the Coordinating Committee for Multilateral Export Controls of the Western industrial countries against the export of High-technology goods, Porzner further reported. North Korea denies IAEA [International Atomic Energy Agency] inspectors access to its nuclear facilities, which allegedly serve peaceful purposes. According to the findings of "friendly secret services," North Korea will have enough material for the construction of two to three nuclear bombs as early as "in the middle of the nineties,"the BND report continues. A reactor "in the Yongbyon area" clearly serves noncivilian purposes—the production of plutonium for making weapons. An indication is the complete absence of cables or lines to carry off the electricity produced.

The BND also presents new findings on the stage of the Iranian efforts to produce the bomb—which are denied by Tehran. In contrast to the general assessment, Iran has advanced as far on the road toward producing the nuclear bomb as Iraq had before the beginning of the Gulf war, a secret service man reported to the Chancellor's Office the week before last. The fact that Tehran really wants to become a nuclear power also became evident during a talk by Alfred Dregger, chairman of the Christian Democratic Union/Christian Social Union Group, with Iranian Foreign Minister 'Ali Akbar Velayati. In response to Dregger's inquiries about the nuclear program, Velayati stated that Iran has one nuclear power in the West (Israel) and two nuclear powers in the East (India and Pakistan). Thus, "everything was clear to us," one of Dregger's advisers said.

[From Korea Newsreview, Sept. 14, 1991]

MILITARY SERVICE TERM TO BE CUT BY 2 to 5 MONTHS

The Defense Ministry will stop conscription of short-term soldiers, or bangwi-byong, and shorten the military service term of regular servicemen by two to five months beginning early 1993.

Defense Minister Lee Jong-koo said last week that the compulsory service for the Army soldiers and Marines will be reduced to 26 months from the current 30 months, sailors to 30 months from 32 months, and airmen from 35 months to 30 months.

The Armed Forces now have some 174,000 short-term soldiers, or 27 percent of the combat forces of the nation's 830,000 standing forces, which will be reduced to 700,000 when conscription of the short-term soldiers, who serve six to 18 months, is stopped, Lee said.

Lee said improvement of the military manpower system is intended to actively cope with the changing international security environment and to contribute to inter-Korea dialogue and arms reduction.

Minister Lee said the ministry could consider further reducing the size of standing forces and the term of military service once the tension between the South and North is eased.

Lee made the announcement of the new military manpower system shortly after President Rob Tae-woo approved it.

The new system will enhance balance of military duty among servicemen and save a considerable sum in the defense budget.

Maintaining the 174,000 short-term soldiers costs about 65.1 billion won annually. With that money, the military can draft 50,000 more regular servicemen to improve defense capability, said Minister Lee.

The changes will not weaken the military's war capability, he said.

Soldiers in the North Korean forces are compelled to serve seven or eight years, and in the South, military service is also compulsory.

Lee said the ministry will reduce draft of short-term soldiers on a gradual basis beginning July next year finishing Jan. 1, 1993. Those conscripted on that day and after will be subject to the new reduced military service terms.

Lee said the new system is also intended to meet the growing popular demand for a lighter military service burden for youths and improve the Armed Forces' defense capability toward a quality-oriented system.

Lee said that the short-term soldiers, who usually reside at home and work at military bases or ward offices, caused 62.5 percent of the trouble between servicemen and civilians and noted that there is a serious imbalance between urban and rural areas in resources for short-term-term soldiers.

The Military Manpower Administration began to draft short-term soldiers in April 1964. Most of them were engaged in auxiliary work for defense of local areas.

Short-term conscripts include youths with physical problems and only sons.●

NO HOLD ON PUBLIC TELECOMMUNICATIONS ACT—S. 1504

● Mr. SIMPSON. Mr. President, there is a bill on the Senate Calendar, S. 1504, which would authorize appropriations for the Public Broadcasting System. Yesterday my office began receiving a number of calls to pursue the rumor that I had personally placed a hold on this legislation. Frankly, until yesterday, I was not aware that this bill, which had been placed on the Calendar on November 19, was working its way up the stack. I wish to fully dispel that rumor—which at this time of the year, in this line of work can rise to epidemic proportions, that somehow I had placed any impediment to the passage of this legislation.

In these latter days, I did have a most interesting interchange with one of the intrepid reporters of National Public Radio—and apparently that may be the reason for the calls. But this is not so. I do not do business in that fashion. I have not in the past, nor I do not currently have any hold on this bill, nor do I intend to place one on this legislation.●

PASSAGE OF H.R. 543, A BILL TO ESTABLISH THE MANZANAR NATIONAL HISTORIC SITE

● Mr. CRANSTON. Mr. President, I rise in support of H.R. 543, a bill to establish the Manzanar National Historic Site in the State of California. This measure is a companion to S. 621, which I introduced earlier this year.

Mr. President, Manzanar was one of the 10 permanent Japanese-American relocation camps used during World War II. By designating Manzanar as a National Historic Site, we honor the memory of the Japanese-Americans

who were deprived of their basic constitutional rights and provide a reminder of the grave injustice done to them. We also help ensure that this unfortunate period in our history is not forgotten and that we learn from it.

Located at the foot of the eastern slope of the Sierra Nevada Mountain range approximately 175 miles north of Los Angeles, the Manzanar War Relocation Center was occupied from the spring of 1942 to the end of 1945. The entire Manzanar Reservation covered some 6,000 acres, with a 500-acre living area and adjacent agricultural land, a reservoir, airport, cemetery, and sewage treatment plant. Although only the camp auditorium and a few other structures remain. National Park Service believes that Manzanar offers the best opportunity among the camps for interpretation of the World War II relocation program.

H.R. 543 designates a 500-acre Manzanar National Historic Site, encompassing the entire living area of the camp, the camp auditorium, and the cemetery. The entire 500 acres is owned by the city of Los Angeles. The city has expressed concerns about the impact of the designation on its water rights and on the city's lands and activities outside the boundaries of the historic site. The city obtains a significant amount of its water from the Owens Valley watershed which includes the Manzanar area. Therefore the bill includes language to protect the city's water rights.

Additionally, the bill includes language to ensure that the designation of the Manzanar National Historic Site does not create, expand or diminish any authority of the Secretary of the Interior over lands or activities of the city of Los Angeles outside the boundaries of the site. In other words, the Secretary's authority over lands and activities outside the boundaries of the site is not altered as a result of enactment of this bill. The bill is entirely neutral in this regard.

Mr. President, I urge passage of this important legislation.●

EDWARD LEE HOWARD

● Mr. McCONNELL. Mr. President, I would like to take a brief moment to comment on an article that appeared in yesterday's Washington Times. Entitled "CIA Defector Now Unguarded," it details the apparent diminishing KGB interest in Edward Lee Howard, a former CIA employee wanted by the FBI on charges of selling United States secrets to the Soviets.

I cannot image the future Howard envisioned for himself in the Soviet Union when he defected in 1986. He gave up everything he had—including his wife and son—to settle what appears to be a personal score with the CIA. Surely he didn't think the loving embrace he received by the KGB would last forever. If he did, his vision of a guarded life must certainly be changing with each day.

I can only imagine Howard is currently of limited use to Soviet authorities, having had several years to reveal his knowledge of United States intelligence operations and procedures. In short, Mr. President, Edward Lee Howard is no longer an asset to that intelligence organization. In the months to come, I anticipate that Howard will feel more than the Moscow winter—he will realize a definite chill in his relationship with his Soviet protectors.

Mr. President, in closing let me just add that I intend to continue to follow developments in this case. In the near future, Mr. Howard might very well find his welcome in the Soviet Union has worn thin.

In order that my colleagues become more familiar with this case, I ask that a New York Times Magazine article by David Wise and a copy of the Washington Times article appear in the RECORD following my remarks.

The material follows:

CIA DEFECTOR NOW UNGUARDED

REPORTER FINDS HIM IN MOSCOW APARTMENT

(By Bill Gertz)

CIA defector Edward Lee Howard has lost the round-the-clock protection provided by the KGB in Moscow and worries that he could be turned over to U.S. authorities for prosecution, according to Bush administration intelligence officials.

A Western reporter recently approached Howard at his Moscow apartment and the defector tried to have the reporter thrown out, said officials who spoke on condition of anonymity.

However, no security guards were present or came to Howard's aid in trying to oust the journalist from the apartment building, the officials said.

The officials said the incident was a clear sign the Soviets have abandoned the blanket protection once afforded their prize CIA defector.

FBI spokesman Bill Carter declined to comment on whether Howard has lost his security protection. But he said the former CIA operative still is wanted on espionage charges.

In Moscow, Alexi Zakharov, a spokesman for the Soviet security police, said of Howard: "I don't know the man, but in our country everything is possible."

Asked if someone like Howard might leave the country someday, the spokesman said of the spy business; "In these days, ours leave, and yours come, so in general everything is possible."

Howard, a CIA operative from 1981 to 1983, slipped away from FBI surveillance agents watching his New Mexico home in September 1985. Several months later he was granted political asylum in Moscow.

Trained as a Moscow case officer, he is the first CIA officer ever to defect to the KGB, and U.S. officials have said his disclosures caused the deaths of several agents working secretly in Moscow.

The KGB, a central pillar of Soviet power, was disbanded following disclosures that its chairman, Vladimir Kryuchkov, and several top aides helped engineer the abortive coup last August.

In its place, several new organizations were set up. The internal security and counterintelligence police is called the Inter-republican Security Service. A separate foreign espionage branch was renamed the Central Security Service.

Howard told The Washington Post last year that he lived in a country house outside Moscow with two KGB guards who provided 24-hour protection against possible kidnapping by Western spy services.

At the time the defector said he regularly played chess with his guards.

David Wise, author of the 1988 book on Howard, "The Spy Who Got Away," said the defector also lives in an apartment provided by the KGB near the Arbat, a shopping area of Moscow.

It was at this second-floor apartment where the recent confrontation between Howard and a Western correspondent took place, the officials said.

"He worries a lot about being abducted," Mr. Wise said in an interview.

According to Mr. Wise, Howard told him during a series of interviews in Hungary several years ago that he feared the CIA would abduct him or poison food sent to him from abroad.

"I have to worry that the agency might try to kidnap me," Howard was quoted as saying in the Wise book, "It wouldn't take much, a hypodermic needle, throw me in the trunk of the car, and it's only two hours to the [Austrian] border."

Thomas DuHadway, the late chief of the FBI's intelligence division, said in September that the United States should press the Soviets to extradite Howard in exchange for U.S. economic assistance.

THE SPY WHO GOT AWAY

(By David Wise)

(Edward Lee Howard was a C.I.A. recruit bound for Moscow. Dismissed, he eluded the F.B.I., defected and left U.S. intelligence efforts compromised. Now it has been learned that another ex-C.I.A. agent was aware of the betrayal.)

In the silence just before twilight in the desert near Santa Fe, the sky changes colors, shading to pinks and reds, and the sunset casts an orange glow on the golden snakeweed, the prickly pear cactuses and the juniper trees. The Sangre de Cristo mountains turn purple, then swiftly black. Suddenly, the first stars appear and the night belongs to the coyotes, the chirping toads and the owls.

On just such a night a little more than a year ago, with the clouds racing past a quarter-moon, Edward Lee Howard, a 33-year-old former officer of the Central Intelligence Agency, slipped away from agents of the Federal Bureau of Investigation and vanished.

On Aug. 7 of this year, he surfaced in Moscow, granted political asylum by the Russians. According to intelligence officials, Howard betrayed the methods used by the C.I.A. to contact its spies—"assets" in intelligence jargon—in the Soviet Union, leading directly to the arrest of one such C.I.A. asset, Soviet defense researcher Adolf G. Tolkachev, whose execution was announced a week and a half ago by Tass, the Soviet news agency. Howard's information also may have led to the expulsion from Moscow of several American intelligence agents and the detention of other Soviet citizens who were working for the C.I.A.

Howard is the first known C.I.A. man to have defected to the Soviet Union in the 39-year history of the agency. His defection was, perhaps, the greatest embarrassment ever suffered by the C.I.A. But a second

former C.I.A. man, whose identity and role have been a tightly guarded secret, is also a key figure in the case. The second man is William G. Bosch.

F.B.I. agents tracked Bosch down on South Padre Island, at the southernmost tip of Texas, near the Mexican border. For four days, they interrogated him, even as other agents maintained a 24-hour surveillance on Howard in Santa Fe, N.M. According to intelligence sources, Bosch finally told the F.B.I. that on a visit to the island, Howard confided to him that he had sold secrets to the K.G.B. in Europe and sought to enlist him in further espionage plans. The officials said Bosch also told the F.B.I. that the two men discussed taking a trip to the Soviet Embassy in Mexico.

But in a day of high drama, at the very moment that F.B.I. agents were questioning Bosch, Howard was planning his successful escape from his home in the New Mexico desert.

Edward Lee Howard has been charged with conspiring to violate the espionage laws by his visit to South Padre Island. Bosch, who, like Howard, left the C.I.A. under a cloud, has not been charged. But his statements provided the key evidence that enabled the Department of Justice to file a criminal complaint against Howard. Bosch, who lives in the Los Angeles area, has declined to comment.

Former Director of Central Intelligence Stansfield Turner has said that United States intelligence was "very badly hurt" by Howard, who had "very critical information about operations inside the Soviet Union."

Another intelligence official put it more bluntly: "He wiped out Moscow station."

To understand the Howard case, one must step through the looking glass into the murky world of counterintelligence, where nothing is quite what it seems and not every question has an answer.

One thing is clear, however. The Howard case vastly embarrassed the C.I.A. and the F.B.I. Behind the scenes, there has been a good deal of finger-pointing between the two agencies—each blaming the other.

The existence of a second man in the case is only one of many startling aspects that surround the affair. While many facets of the case remain unclear, an in-depth investigation, including dozens of interviews with Howard's family, friends, associates, neighbors and Government officials, among them a number of persons in the intelligence agencies, has revealed other surprising information, much of which has not previously been disclosed.

Edward Howard and his wife, Mary, were both employed by the C.I.A.'s Directorate of Operations, the agency's clandestine arm. They were trained by the agency to operate in Moscow as a husband-and-wife spy team.

Only one F.B.I. agent was watching the Howards' house on Sept. 21, 1985, as Mary Howard helped her husband escape by driving home with a dummy in the front seat, a dummy made of clothes shaped in a human form and topped with a wig stand for its head. In the darkness, the agent apparently mistook the dummy for Howard—a ruse that gave the ex-spy a 24-hour head start.

Mary Howard further aided her husband's escape by playing a tape recording of his voice over their telephone that fooled F.B.I. agents, who were wire-tapping the phone, into believing he was still at home.

Mary Howard was with her husband at a Austrian ski resort near the Swiss border on Sept. 20, 1984, during a trip when the F.B.I. believes he met with K.G.B. agents. But she insists he was only gone from their hotel room for a short time and maintains she never had any knowledge of his alleged spying for the Russians. For a year after her husband vanished, Mary Howard declined to talk to the press. She broke her silence and agreed to be interviewed for the first time by this reporter.

Both the C.I.A. and the F.B.I. were sharply criticized by the President's Foreign Intelligence Advisory Board for their handling of the Howard case, and both agencies have officially reprimanded a number of employees involved.

The Howard case did more than compromise on-going clandestine operations. To the C.I.A., it remains a skein that, if unraveled, could expose flaws in both the conduct of the agency's secret operations and its bureaucratic procedures. Inevitably, the defection of Edward Howard has raised larger concerns about C.I.A. security, recruitment and personnel policies, and about the overall United States counterintelligence effort.

This case also brings up a number of intriguing and unanswered questions which, presumably, officials of the C.I.A. and F.B.I. are asking themselves. Why did Edward Howard feel secure in going to William Bosch to tell him he was betraying his country? Why didn't Bosch come forward and inform the authorities when he was first approached by Howard? And does this case indicate the existence of larger cracks in the armor of American intelligence?

On the morning of Aug. 1, 1985, Vitaly Yurchenko, deputy chief of the K.G.B.'s First Department, which is responsible for operations in the United States and Canada, told colleagues at the Soviet Embassy in Rome that he was going to take a walk and visit the Vatican Museum. Yurchenko, then 49, had arrived in Rome a week earlier.

When he did not return by dinner time, embassy officials were frantic. Not until the next day did they file a missing persons report with the Italian police. But the K.G.B. resident in Rome must already have suspected the worst: Vitaly Yurchenko, a trusted "general-designate" in the K.G.B. with 25 years of service in the Soviet intelligence agency, had defected.

Yurchenko, a big catch for the C.I.A., was whisked to a safe house near Fredericksburg, Va., for questioning. Before he escaped his C.I.A. handlers and redefected to Moscow three months later, leaving a trail of recrimination and confusion within the intelligence community, he provided vital information. The first order of business when a defector is interrogated is to learn whether he knows of any penetrations of United States intelligence. Yurchenko said he knew of two. He provided details that led the F.B.I. to Ronald W. Pelton, a former employee of the National Security Agency, who was convicted of espionage in June 1986.

Yurchenko said the other mole had worked for the C.I.A. and was known to him only by the code name "Robert." Yurchenko had never met Robert and could provide no physical description. But he had two crucial clues to his identity: Robert had met with senior K.G.B. agents in Austria in the fall of 1984 and sold them C.I.A. secrets. Moreover, Robert had been prepared for posting to Moscow and was familiar with the complex techniques used by the C.I.A. for contacting its agents there, perhaps even their code names or identities.

The news horrified Yurchenko's C.I.A. interrogators. If true, it meant there had been a mole in their inner sanctum, the most sensitive part of the agency, the Soviet European division. There had already been disturbing intimations that something was wrong in Moscow; at least one major operation had been blown, and the C.I.A.'s Soviet contact, Adolf Tolkachev, arrested. If Robert had talked to the K.G.B., the C.I.A.'s entire Soviet network might be in danger.

It did not take C.I.A. officials long to zero in on the man who fit Yurchenko's profile. In the spring of 1983, he had been getting ready for assignment to the C.I.A.'s Moscow station, his first overseas post, when at the last moment some troubling polygraph results and a security investigation disclosed drug use and petty theft, C.I.A. officials have said. Instead of sending the officer to Moscow, the agency took the unusual step of firing him.

His name was Edward Lee Howard.

He had applied to the C.I.A. in 1980. At the time, he was 28, married and working as manager of the Chicago regional office of a firm called Ecology and Environment Inc. It occurred to Ed Howard that there might be something more challenging in life than looking for toxic waste dumps. "He just mentioned one day that he had applied for a job in the agency," Mary Howard said. "I think that's what he wanted to do for a long time."

Mary Cedarleaf Howard, a quiet, intelligent woman of 36, with brown hair and blue eyes, now lives in seclusion with her young son and her parents near St. Paul, Minn. In a series of conversations, Mary Howard said nothing critical abut Edward Howard, except to confirm that he had a drinking problem that was the cause of arguments between them. At the same time, she appeared to be loyal to her former employer, the C.I.A. She said she was still fond of her husband, although she has refused his request that she and their son join him in Moscow.

To the C.I.A., Howard had apparently looked like an ideal recruit. He had a graduate degree, work experience, and both he and his wife were accustomed to living overseas. Howard was fluent in Spanish and German, a smooth, well-spoken man who collected guns and knew how to use them. Although born in New Mexico, he had grown up in Europe, his father, Kenneth Howard, had been an Air Force electronics specialist who worked on guided missiles and had been stationed at bases in Germany, Texas and England.

"He played Little League and everything," Kenneth Howard said of his son. "He was in the Boy Scouts, up to Explorer." Ed Howard graduated from high school in Branden, England, then enrolled at the University of Texas, where he belonged to the karate club and graduated cum laude in 1972, the same year his father retired from the Air Force.

Ed Howard and Mary Cedarleaf met in the Peace Corps in 1973, both in their early 20's and fresh out of college. Mary had grown up in St. Paul, the daughter of an insurance executive and a physician. In the Peace Corps, "we started out in the same town in Colombia, called Bucaramanga," she said. They were married three years later, at a Lutheran church in St. Paul.

That same year, Ed Howard earned a master's degree in business administration from the American University in Washington, and joined the Agency for International Development. In February 1977, the Howards left for two years in Lima, Peru, where he worked on loan projects for A.I.D. Although the C.I.A. sometimes uses A.I.D. as diplomatic cover, there is no evidence to suggest that Howard was anything but a loan officer. After Peru, the Howards returned to the United States, and he landed the environmental job in Chicago.

In January 1981, the C.I.A. hired Edward Howard as a career trainee in the Directorate of Operations, also known as the D.D.O. (in reference to the Deputy Director for Operations) and as the Clandestine Services. Mary stayed at their home in Barrington, a Chicago suburb, while Ed reported to C.I.A. headquarters at Langley, Va. He was sent for several months to the Farm, a secret C.I.A. installation at Camp Peary, Va., near Williamsburg. There, Howard learned the "tradecraft" of intelligence, practicing the recruitment of agents and the use of "dead drops" to pass messages. He was given five aliases. He also learned from F.B.I. agents at the Farm how to detect and evade surveillance.

In the spring, Mary came east to join him. They purchased a house on Scotch Haven Drive in Country Creek, a development of single-family town houses in suburban Vienna, Va.

When Robert Magee, the C.I.A.'s director of personnel, later reviewed the Howard case, he discovered that there had been one blip on the security screen even at the start. Every candidate for the C.I.A. who passes the two initial screenings is given a polygraph test—"fluttered" in C.I.A. jargon. Patti Volz, a C.I.A. spokesman, said Howard's initial polygraph indicated "some drug use." But C.I.A. applicants who admit to using drugs are not automatically disqualified, if they agree to end the practice when hired. Patti Volz said nothing about Howard's alcohol problem. The agency was apparently unaware of it.

In Country Creek, the young couple kept to themselves. Howard told the neighbors that he worked for the State Department. He jogged regularly on the path behind his house and was seen walking his dog, a German shepherd that he had bought as a pup in Lima. Howard named the dog Whisky.

In the fall of 1981, Mary joined the C.I.A. as a regular, full-time employee and, like her husband, was assigned to the agency's clandestine arm. "I wasn't a case officer like Ed," she said. "I was more a secretary. I worked for the D.D.O." The C.I.A. is a closed society, and it is not unusual to find married couples working for the agency.

The agency's covert operators also tend to choose their friends among colleagues in the D.D.O. It was there that Howard met William G. Bosch, a 6-foot, 3-inch, blond, balding C.I.A. veteran who had served in the agency's administrative side, then switched to the D.D.O. shortly before Howard joined the C.I.A. They shared a common background. Howard had worked in Lima; Bill Bosch, who was three years older, had served the agency in Bolivia, and, like Howard, spoke Spanish. The two became good friends.

Howard's career was progressing well. He was chosen for a singular honor, service in the Soviet European division (S.E.), which covers the Soviet Union and Eastern Europe. "S.E. is the holiest of holies," one veteran case officer explained. "They're a closed, cliquish, incestuous bunch of people. Nobody looks over their shoulder. S.E. screens their own and thumbs their nose at anybody else."

By late 1982, Howard had been selected for the most prestigious duty in the D.D.O., assignment to the Moscow station for a two-year term. His cover: diplomat in the American Embassy.

Why did the C.I.A. choose to send to its most sensitive post a newcomer with no previous experience working as an intelligence officer overseas? William J. Casey, Director of Central Intelligence, and other C.I.A. officials have declined, for the most part, to comment publicly on the Howard case. But Casey has defended privately the decision to send a rookie to Moscow as a common agency practice.

The chief of the S.E. division, in a rare appearance before a secret session of the Senate Select Committee on Intelligence, gave the agency's standard explanation of what has emerged as a major question in the Howard case. In order to make it more difficult for the K.G.B. to identify C.I.A. officers assigned to the Moscow station, the S.E. chief said, the agency chooses junior officers who are not known. Howard, he added, was the first one who had gone bad.

Howard was given special training for his Moscow assignment. He received careful instruction in the arcane techniques of maintaining the delicate and difficult contact with the C.I.A.'s assets.

Mary Howard, too, received training from the C.I.A. to work with her husband in Moscow as a spy. "They like to give some training to wives, short courses," she said. Asked whether it might have included counter-surveillance—such as sitting in a car and acting as a lookout while her husband met with an agent—she replied: "It could have been something like that."

Early in 1983, Ed Howard told neighbors he was studying Russian; the State Department was sending him to the Soviet Union. The Howards bought a new car and prepared to ship it to Moscow.

To build his cover, the C.I.A. gave Howard a certificate identifying him as a Foreign Service officer and appointing him "a Consular Officer and a Secretary" in the diplomatic service. It was dated March 11, 1983, and signed by Ronald Reagan and George P. Shultz.

Eight days later, the Howards' son, Lee, was born. Spring was on the way, and the future looked bright.

Then the bottom fell out of Ed Howard's life.

A second lie-detector test suggested that some of Howard's answers were deceptive. The second polygraph "picked up drugs and petty theft," the C.I.A.'s Patti Volz said. (Howard's family insists that, although he drank, he did not use drugs.) An investigation was launched.

Two years later, when Howard fell under suspicion of spying for the Soviets, the C.I.A. ordered an internal report by its then-Deputy Inspector General Carroll Hauver. Those who have read the secret report say that Howard, when confronted after the polygraph test, admitted using drugs, stealing from vending machines and taking money from a woman's purse aboard an airliner.

The C.I.A. decided it could not send Howard to Moscow. In fact, it decided it did not want him in the agency at all. Howard was fired. By June 1983, he was out of a job. He was now walking around with detailed knowledge of the agency's most sensitive operations in Moscow in his head. He was also furious at the C.I.A.

To Curtis R. Porter, staff director of the finance committee of the New Mexico state legislature, the young professional who showed up in his office unannounced to answer an advertisement in The Albuquerque Journal seemed an ideal prospect. The Legislative Finance Committee was looking for an economic analyst, and Edward Howard has the right credentials. Moreover, he was a native of New Mexico. On his résumé, he had put down "U.S. Department of State January 1981-June 1983." He was hired.

By August, the Howards had sold their house in Virginia and bought a home in El Dorado, a development 12 miles out in the desert southeast of Santa Fe. With their new baby, they settled down to life in the Sun Belt.

Howard's job was to estimate state revenues. Late in October, he flew to Washington for an economics conference. Apparently still seething at the agency, he spent several hours near the Soviet Embassy, trying to decide whether to go inside and reveal classified information.

Meanwhile, Howard's drinking was getting worse. On Feb. 26, 1984, a Sunday night, he was involved in a shooting incident with three young men. According to the police report, Howard said he had met the men "at a bar and had followed them home as they had promised him a girlfriend for the night and a good time."

But Peter Hughes, then 24, said that he, a friend and their two female companions were never inside the bar, but were in their Jeep, backing out of a motel parking lot, when Howard stared at one of the women, then followed in his own Jeep.

Hughes and his friend, joined by a third man, were waiting as Howard walked into the courtyard of Hughes's apartment building. "Suddenly from his back, he pulls out this cannon," Hughes said. "I mean a silver chrome .44 Magnum. An awesome gun. He says to me, 'Get back in the Jeep.'"

To Hughes, Howard seemed to have been drinking; his speech was slurred. "I'm inside the Jeep and he's pointing the gun at me. His eyes get this blazing look and he starts walking toward me with the gun, pointing it at my head. I think, *He's about to pull the trigger. He's going to shoot.* The barrel of the gun is coming in the window. So I duck. I grabbed for the gun and it fired, putting a hole in the roof."

With Howard disarmed, the youths beat him up; one threw a rock, hitting him on the head. They forced him back to his own Jeep, kicking the door several times for good measure. Then they called the police, who found Howard, bloodied, a block away. He was placed under arrest for aggravated assault with a deadly weapon.

For Santa Fe District Attorney Eloy F. Martinez, the case was a problem. On the one side was Peter Hughes, whose family was well known in the city—his father, who had been a prisoner of war in Vietnam, had run, albeit unsuccessfully, for the Republican nomination for Governor a decade earlier. On the other side was Howard, who produced letters of support from powerful state legislators and officials in Washington. Martinez said that he briefly considered prosecuting Howard for attempted murder. But Howard hired Santa Fe attorney Morton S. Simon who, by working out a plea bargain, managed to keep the case almost entirely out of the papers. On April 25 Howard pleaded guilty to charges of aggravated assault before Judge Bruce E. Kaufman, who sentenced him to five years probation and ordered that he pay $7,500 to Hughes. Both Martinez and Kaufman denied published reports that the C.I.A. contacted them or tried to influence the case on Howard's behalf.

Howard had voluntarily entered a counseling program for state employees, where Neil Berman, a clinical social worker, treated him for alcoholism for the next year and a half. Psychologist Elliot J. Rapoport conducted a court-ordered psychological evaluation; his report found that Howard had been through a period of unusual stress and "problem drinking," but was "not otherwise criminally oriented." He recommended that Howard remain in the state counseling program.

On Sept. 18, the Howards left for a one-week trip to Europe. According to Vitaly Yurchenko, it was in the fall of 1984 that "Robert" met the K.G.B. in Austria and sold C.I.A. secrets. The F.B.I. established that the Howards were in St. Anton, Austria, on Sept. 29, 1984, although the bureau has not said whether it believes that was the date Howard met with the K.G.B.

Mary Howard said they first visited friends in Switzerland. "We visited Zurich and Lucerne and then decided to go to Austria and then Milan." But she insisted that they chose St. Anton at random. "We were just driving around, and it was getting toward dusk and it looked like a pretty little town," she said. "I'm not aware of any goings-on in St. Anton."

"We had a disagreement," she said. "Our fights were usually over his drinking. He took off in the car. I could see him drive away from the window. He drove around in the car." Could Howard have met the Russians then? "He was only gone a short time," she replied, "perhaps 10 or 15 minutes." She added that they did not stay overnight anywhere else in Austria.

The Howards were back in the United States on Sept. 24, for on that date, Howard met with two current C.I.A. employees—perhaps at C.IA. headquarters—and told them how he had lingered outside the Soviet Embassy almost a year earlier, in October 1983, but did not enter.

Now Howard, a former C.I.A. officer with knowledge of top-secret data, had admitted that he had contemplated betraying his country. The C.I.A. insists that the two employees reported Howard's story to the proper agency officials. But for almost a year, those officials sat on that explosive information and failed to pass it on to the F.B.I. The C.I.A. will not say whether disciplinary action was taken against the officials.

Howard may have confessed the embassy incident as part of a plea to the C.I.A. to pay for psychiatric treatment. Howard did see a private psychiatrist in Santa Fe for a period of time and the C.I.A. paid for his visits.

Howard was still acting like a man under a great deal of stress. On a business trip to Boston the next month, Curtis Porter of the finance committee found Howard in his hotel room with a bandaged head; he claimed he had walked into a glass door and been given pain killers at the hospital. Later, Howard abruptly left a banquet and Porter found him packing and on the phone trying to make plane reservations to Austria. Recalled Porter: "He said, 'Sorry, I got crazy with the pain killers and booze. Don't worry, Mary knows every time I get drunk I try to go to Vienna.'" But Howard did not go; he realized he had no passport with him.

Kate and Bob Gallegos worked in Howard's office and lived in El Dorado; the two couples were friends. Bob Gallegos said that Howard once showed him a stack of Krugerrands worth perhaps $2,400. Gallegos also claimed that Howard "was having several affairs" with women in the office. Other friends say they were unaware of Howard's alleged womanizing, although one said he knew of a single "sporadic" affair.

In the spring of 1985, friends say, the Howards visited Europe again. Dennis Hazlett, a co-worker, said Howard came back with a Rolex watch and intimated he had been to Vienna.

On June 14, 1985, Tass, the Soviet news agency, announced that Paul M. Stombaugh, a "second secretary" at the United States Embassy in Moscow, was being expelled as a spy. Three months later the Russians disclosed that they had also arrested Tolkachev, the Soviet researcher, as he attempted to pass secret documents to Stombaugh.

American intelligence officials later confirmed that Tolkachev was an expert on "stealth" technology to conceal aircraft and missiles from radar, and had been one of the C.I.A.'s most valuable assets in Moscow. They also claimed that Tolkachev had been betrayed by Edward Lee Howard.

In July, Howard went to South Padre Island, to visit Bill Bosch. Bosch, too, had gotten into trouble with the C.I.A. after questions had been raised about alleged currency transactions in South America, according to intelligence officials. "He was dismissed by the C.I.A., or left before they could fire him," a senior intelligence source said.

It was on this visit, Bosch was later to tell the F.B.I., that Howard confessed his spying for the Russians and discussed plans for future contacts with Soviet officials. According to intelligence officials, the two ex-C.I.A. officers discussed taking a trip to the Soviet Embassy in Mexico City, a trip that Bosch said did not take place.

Bosch now lives in Laguna Beach, Calif., a resort about one-and-a-half hours south of Los Angeles. Although an old and established town, Laguna Beach is also known as a home to young singles and transients—a place where people can come and go with relative ease and not attract attention.

Bosch rents a small, inexpensive room on the first floor of an old, two-story brown-shingle house that has been converted into apartments and is set back from the street, surrounded by trees, two blocks from the Pacific Ocean.

According to a neighbor, Bosch is "a nice guy, a quiet guy," who drives a Porsche and is "here at night sometimes, but not here often." Other neighbors in his building and adjacent houses said they did not know him. Attempts to contact Bosch in person proved unavailing; reached by telephone, he declined to be interviewed. "I have no comment," he said, "either on or off the record."

On July 27, 1985, the Gallegoses went to the Howards' home for dinner. Howard and his son Lee modeled two fur hats, Bob Gallegos said. "They were in a box with Russian writing. He said he had asked a friend in the State Department to send them to him." Gallegos said he has an indelible memory of Howard standing inside the house "wearing gym shorts and a fur hat, smoking a cigar and drinking a St. Pauli Girl."

Five days later, Vitaly Yurchenko vanished in Rome. The C.I.A. called in the F.B.I.

The case could not have come at a worse time for James H. Geer. On Aug. 5, 1985, his first day as assistant director of the F.B.I. in charge of the intelligence division, the Howard case landed on his desk at bureau headquarters in Washington. It was Geer's job to catch foreign agents. Geer, then 45 and a 21-year veteran of the F.B.I., was confronted with a major and potentially explosive counterintelligence case.

Geer called in Phillip A. Parker, the division's deputy director for operations. Parker, 49, had worked on foreign counterintelligence cases for most of his 20 years in the F.B.I., and he had been the No. 2 man in the division for three years.

Parker notified William D. Branon, who had just taken over the F.B.I.'s Albuquerque office. F.B.I. agents from several other cities were brought in to assist him. Within a few days, a small army of F.B.I. agents was deployed in Albuquerque and in Santa Fe, 60 miles to the north.

The F.B.I. began watching Howard, but there were problems. The Howards lived at 108 Verano Loop, a circular road of widely spaced, mock-adobe houses, where strangers are quickly spotted. Ironically, Thomas (Bill) Gillespie, one of the four resident F.B.I. agents in Santa Fe, lived two houses away from the Howards, at 112 Verano Loop. It was a perfect location for surveillance. But Gillespie had just sold his house, and the new owners had moved in on Aug. 4, the day before the F.B.I. got the case. So the house was not available. The F.B.I. did not, in fact, use any house as an observation post. Whether it employed "special coverage"—agents posing as a street repair crew, telephone linemen or the like—is not known. What is known is that the Howard residence was placed under surveillance.

The legal problem was even more formidable. "We had no probable cause to arrest Howard," Geer explained. Yurchenko's evidence was not enough. "Yurchenko never saw him," Geer said. "He didn't know him by name. It was a circumstantial case. You have to have much more than one man's word. Yurchenko did not even have a physical description." Parker, now retired, was equally emphatic that the F.B.I. had no immediate basis for arresting Howard.

The F.B.I. needed more evidence. The bureau applied for and got a wiretap warrant from a special seven-member court established in 1978 by the Foreign Intelligence Surveillance Act.

By the beginning of September, wiretaps were in place on the Howards' home telephone. The results were disappointing. Howard said nothing incriminating.

By Thursday, Sept. 19, the F.B.I. had made the decision to confront Howard directly. Still lacking probable cause to arrest the ex-C.I.A. man, the bureau hoped that Howard himself might provide the necessary evidence. The decision to approach Howard was made by Parker. There was a risk, he knew, that Howard might run, although it seemed minimal, given the round-the-clock surveillance then in place. The interview technique had worked in the past, and was used to convict Ronald Pelton, the other man named by Yurchenko.

That morning, an F.B.I. agent telephoned Howard at his office and asked to interview him. Within the hour, Howard met with the agent at the Hilton Inn, but he refused to say anything of substance.

The F.B.I. now switched to what it calls a "nondiscreet" surveillance. The agents following Howard no longer tried to blend in with the crowd. On Friday, Sept. 20, Howard walked up to one of the now-obvious agents on the street and asked to see the agent who had tried to interview him the day before. Another brief meeting took place, and Howard sounded more cooperative. He told the agent that he wanted time to get a lawyer and would meet with the F.B.I. the following week. Word was sent back to F.B.I. headquarters that Howard might be getting ready to talk.

That Friday morning, Phillip M. Baca was getting nervous. Baca, the new director of the Legislative Finance Committee, had been visited the day before by two F.B.I. agents, who asked for records on Howard. The 8:30 A.M. staff briefing of the committee, to prepare the lawmakers for a 9 A.M. public hearing, was about to begin and Ed Howard was uncharacteristically late. He finally arrived at the office at 8:25 A.M. "He did a beautiful briefing on the 18-month economic outlook," Baca said. "He had graphs. During the hearing, some questions came up on the

price of oil. He answered them and was completely calm."

On the morning of Saturday, Sept. 21, Howard went into his office at the capitol. F.B.I. agents followed him. What they did not yet know was that he would write two letters in his office that day.

"We did a lot of talking that weekend," Mary Howard recalled. Howard had told her of the approach by the F.B.I. It was, she said, the first she knew he was in trouble. "It was like a nightmare," she said. "It's very traumatic still." But, she added, "I don't have any knowledge he spied."

At 3 P.M., Rosa Carlson got a telephone call from her neighbor, Mary Howard. As they had the same baby sitter that afternoon, would it be all right if the sitter walked over with Lee to the Carlsons and combined the job? Mrs. Carlson said that would be fine.

At 4 P.M., 16-year-old Gina Jackson arrived at the Howards'. Mary Howard did not stop to chat with her in her usual friendly manner. Instead, she led Gina and Lee directly out back to the patio.

"As I went through the house," Gina Jackson said, "I thought I heard two people talking. Out of the corner of my eye I saw a completely bald-headed person standing in the entranceway between the den and living room."

Later, Gina said, "the F.B.I. told me it wasn't two men talking, it was Ed Howard with a tape recorder and a dummy."

On the patio, Mary Howard seemed distracted. She did not provide the sitter with a phone number but told her the name of a Spanish restaurant in Santa Fe where they would be. In a few moments the sitter heard the car pull out of the garage.

What happened next is baffling, either a mix-up in communication, or human error. Only one F.B.I. surveillance agent was on duty, several hundred feet from the Howard house. Although it was about 4:30 P.M. and broad daylight, the Howards drove away in their dark red 1979 Oldsmobile undetected.

Ed and Mary Howard left El Dorado and swung onto Interstate Highway 25, heading northwest for Santa Fe. Other F.B.I. agents were spread out in cars a few miles away, awaiting word by radio to move out and follow the Howards. The signal never came.

Around 6 P.M. Gina Jackson walked a block to the Carlsons with Lee. She watched while Lee and the two young Carlson boys, Zac and Jonathan, played with water in the bathtub.

An hour later, around 7 P.M. the Howards drove from the restaurant where they had dined. In the darkness, somewhere in the downtown area, Ed Howard jumped from the slowly moving car into a "blind spot," as he had been trained to do at the Farm. It was the last time Mary saw him.

When Mary Howard arrived back home around 7:20 P.M. there was a dummy in the passenger seat in place of her husband. It was made of clothes shaped into a human form, topped with a faceless wig stand. Atop the wig stand was some sort of headgear. (Mary Howard said published reports that she had used an inflatable dummy were "not true.")

The surveillance agent on duty was surprised to see the Howards returning, since he had not seen them leave—surprised but relieved, since they were together. Ed Howard seemed to be wearing a hat, but in the dark, the F.B.I. man could not be sure.

The automatic garage door opened, and Mary Howard drove inside. She drove out a few minutes later, alone. She arrived at the Carlsons' house at 7:30 P.M. to pick up Lee, then drove back to their house and into the garage. The surveillance agent dutifully logged them in.

That night, Mary Howard carried out another ruse that her husband had planned with her. The ex-C.I.A. man had recorded his voice on the tape recorder. Following his instructions, Mary dialed a business office where the Howards knew she would reach an answering machine. At the beep, Mary held the tape recorder next to the telephone and pressed the "play" button. F.B.I. agents listening in "live" heard Howard confirm an upcoming appointment and were reassured; their target was still at home and staying in town.

Back in Washington that Saturday evening, F.B.I. agents in the intelligence division were excited; it appeared they might finally be getting the evidence they needed to seek a warrant for Howard's arrest.

The F.B.I. had tracked down William Bosch on South Padre Island. The bureau had discovered that Howard had been in touch with Bosch, located him with the help of long-distance toll-call records, and learned of his background from the C.I.A. F.B.I. agents had moved in and begun questioning him intensively in midweek. Gradually, Bosch's story was unfolding.

According to intelligence officials, Bosch said that Howard had made more than one trip to South Padre Island to see him; in July, Howard had come to the island and told Bosch he had sold C.I.A. data to the Russians, and the two men had had the discussion of Howard's plan to visit the Soviet Embassy in Mexico City.

There was no secure phone line on South Padre Island, so the electrifying reports of Bosch's interrogation had to be driven 300 miles to the F.B.I. office in San Antonio, then teletyped to the intelligence division on the fourth floor of F.B.I. headquarters.

James Geer said it was midnight in Washington, two hours later than in Santa Fe, before the F.B.I. decided it now had probable cause to seek a warrant for the arrest of Edward Howard. It could not be obtained at that hour, on a weekend, but there was no reason to worry. The lights had gone out at 108 Verano Loop. The surveillance was still in place in the desert, and the Howards were safely tucked away for the night.

Late on Sunday afternoon, Phil Baca went into the office unexpectedly. On his desk, he found an envelope, and, inside it, a letter of resignation from Ed Howard, along with the keys to the office and a smaller envelope addressed to Mary, which Baca did not open. He called the F.B.I. "I told them Ed Howard had resigned," Baca said. The F.B.I. was stunned.

Agents rang the doorbell at Howard's house and learned from Mary that Howard was gone. Mary Howard turned her husband's letter over to the F.B.I. One cryptic line in the letter, not previously known, said: "National security is like holding a royal flush in Santa Fe." The note also said, in part: "Well, I'm going and maybe I'll give them what they think I already gave them," and instructed Mary to "sell the house, Jeep, etc., and move with one of our parents and be happy." Howard also told Mary to tell Lee that "I think of him and you each day until I die."

By the time the F.B.I. realized that Howard had vanished, he had a 24-hour head start. Bureau officials believe he flew from Albuquerque, to New York, to Helsinki, and then crossed the border into the Soviet Union.

On Monday, Sept. 23, the F.B.I. finally got its arrest warrant from a United States magistrate in Albuquerque.

Howard called Mary once, the following month, but did not say where he was. In the spring, he sent her a letter, postmarked Vienna. On Aug. 7, 1986, Howard surfaced in Moscow.

Edward Howard has been charged with espionage. Intelligence officials say the damage he did to the C.I.A.'s Soviet operations was enormous. Some sources have suggested that the damage continued beyond Tolkachev, the C.I.A. agent executed by Moscow on March 14 of this year. Tass announced that Michael Sellers, Second Secretary of the United States Embassy in Moscow, was being expelled for espionage. On May 7, the Russians said, Erik Sites, listed as a civilian employee of the embassy's military attache office, strolled along Malaya Priogovskaya street to contact a Soviet C.I.A. asset when the K.G.B. closed in. Sites's wife, Ursula, was waiting nearby as a lookout, the Russians said. Sites, too, was expelled.

Certainly, the Howard case exposed major flaws inside the C.I.A. The agency hired a man who drank heavily and, according to the agency at least, used drugs. It ignored early warnings on his first polygraph test. It selected him for its most sensitive post, despite his lack of experience. Then, when it discovered he had serious character defects and problems, it fired him instead of easing him into another job where he might have posed less of a security risk. It paid for his psychiatric counseling after it was too late. Most astonishing of all, when Howard confessed to the agency that he had contemplated entering the Soviet Embassy in Washington to sell secrets, the C.I.A. sat on that information for almost a year before telling the F.B.I. Finally, after Howard was fired, the C.I.A. neglected to recover both his diplomatic passport and a false-name passport he had been issued by the Clandestine Services.

Within the intelligence community, some of the heat in the Howard case has been taken by Clair E. George, the C.I.A.'s Deputy Director for Operations, and certainly the affair suggests that the agency's clandestine arm performed sloppily. But the case also appears to illustrate loopholes in the agency's personnel and hiring policies and a lack of coordination between its medical and security offices. It suggests that, in order to avoid embarrassment, the agency attempted to suppress at any cost what eventually turned into a major spy scandal.

For its part, the F.B.I. was vastly embarrassed that Howard got away, a fact that F.B.I. director William H. Webster calls an "aberration." James Geer, the head of the F.B.I.'s intelligence division, while conceding a mistake "at our on-the-scene operations," sees "no institutional weakness," and cites the F.B.I.'s success in rounding up several other spies in the same year that Howard escaped.

Howard's motive remains unclear. He was angry at the C.I.A., but had no apparent ideological sympathy for the Soviet Union. Dennis Hazlett, his friend, said Howard seemed, if anything, conservative, patriotic," a little Reaganite in his views."

"I love my country," Howard said on Soviet television on Sept. 14 of this year. "I have never done anything that might harm my country."

If Howard was paid large amounts of money for his information, the F.B.I. has been unable to trace it. "We just don't know

where the money is, if he got it," one senior F.B.I. man said. Mary Howard said: "I never saw unusual amounts of money," nor any Krugerrands. They lived on her husband's $33,012-a-year salary, she said.

"If he did anything," Kenneth Howard said, "it was through revenge or anger at what the agency did to him." Edward Howard's father has even wondered whether the C.I.A. "might be playing some strange games," whether perhaps his son was still working for the agency. Others have also wondered if Howard was allowed to escape and is a double agent. But F.B.I. officials scoff at that idea.

Edward Howard is a man caught between the superpowers. He faces a bleak future in an alien land, joining the dubious roll call of defectors who have refuge behind the Iron Curtain: Kim Philby, Guy Burgess, Donald Maclean, George Blake. None are ever fully trusted by the K.G.B. Or Howard can come home one day, if the Russians will let him, to face a possible sentence of life imprisonment.

The bottom line, however, is that he has escaped. The F.B.I. is bitter about that, although it takes a certain perverse pride in Howard's skill at countersurveillance, which he had learned at the Farm from the bureau's instructors. "After all," one F.B.I. agent said, "we trained him."•

MOST-FAVORED-NATION STATUS FOR ESTONIA, LATVIA, AND LITHUANIA

•Mr. BRADLEY. Mr. President, I rise today to mark the extension of most-favored-nation status to the Baltic States of Estonia, Latvia, and Lithuania. On July 31, 1991, I introduced legislation extending MFN status to Estonia, Latvia, and Lithuania. At the time, this was an important political demonstration of the independence of the Baltic States. Today, MFN is a tangible means for the three States to expand their economic ties to the United States and begin the process of restoring their economies to the status they enjoyed in the 1920's.

All three States are building institutions that will facilitate trade and economic activity, they are working with the international financial institutions to establish sound separate currencies, and are passing trade laws that establish the authority of the independent governments of Estonia, Latvia, and Lithuania over their customs territory. Most-favored-nation status is a necessary step in furthering the economic transformation that is underway.

The economic consequences of the Baltic MFN treaties stands in sharp contrast with the extension of most-favored-nation status to the Union of Soviet Socialist Republics. The most significant impact of that treaty, I pointed out last night, is to encourage the existence of a potemkin central government that exists only in the minds of a handful of economists and politicians in Moscow.

Let me also point out once again the irony of granting MFN to a Soviet Union that exists only as a legal construct. In July, the administration refused to assert the Baltic States' right to a separate MFN, even though there were existing, enforce MFN treaties between each of the Baltic States and the United States, and even though we never recognized the incorporation of the Baltic States into the Soviet Union. They said that the Baltic States could not have MFN because they did not control their borders and could not regulate trade within their customs territory. They were de jure states under American and international law, but not de facto ones, the administration told me, and we could not grant MFN to a de jure state. Now, only a few months later, we are being asked to approve a trade agreement with something called the Union of Soviet Socialist Republics. It seems to me that the argument the administration used to deny MFN to the Baltic States now applies to the Soviet Union. The U.S.S.R. is a de jure, not de facto, state. It cannot effectively determine its borders, or set trade and economic policy. It is not even clear what Soviet political institution will ratify the agreement.

It is clear, however, that for Estonia, Latvia, and Lithuania, most-favored-nation status is not only the definitive statement of the Baltic States' independence from the Soviet Union, but marks the return of the Baltic States to the community of free nations.•

TRIBUTE TO JAMES THOMAS RYAN

• Mr. LAUTENBERG. Mr. President, I rise today to recognize a distinguished individual from Maple Shade, NJ, James Thomas Ryan. On December 7, Chief Ryan will be honored by friends and family at the Knights of Columbus 11th Annual Humanitarian Award Banquet.

Mr. President, Chief Ryan was born and raised in Maple Shade, NJ. He graduated from Moorestown High School in 1951. As a high school student, he belonged to both the Civic and Monitor Clubs. He also excelled in athletics, and played varsity football and baseball. In his junior and senior year, he found time to manage the baseball team.

After graduating from high school, Chief Ryan trained to be a plumber while employed at E.C. Worrell Plumbing in Moorestown, NJ. During this time, he also played semipro baseball for the Mount Laurel team in the Rancocas Valley League. In 1952, he played semiprofessional football for the Mount Holly Moose in the Pop Warner League out of Philadelphia.

In 1953, Chief Ryan joined the Marine Corps. After attaining the rank of sergeant, he completed his military career when he was honorably discharged in 1956. He then returned home and worked in his father's heating and fuel oil business until 1962.

It was at this point of his life that Chief Ryan joined the Maple Shade Police Department, where he has served his community for 30 years. In 1970, he earned the rank of sergeant and 3 years later he was promoted to lieutenant. In 1975, he was made captain. On November 20, 1981, Jim Ryan was named chief of the Maple Shade Police Department.

While at the police department, Chief Ryan went on to pursue a higher education. He first attended Temple University from 1966 to 1967, then Trenton State College in 1970, and finally Camden County College from 1975 to 1976.

Mr. President, throughout his life, Chief Ryan has been committed to his community and country. Beyond his service with the Marine Corps and the Maple Shade Police Department, he has been active with the Maple Shade Jaycees, the South Jersey Police Chief's Association, the Rotary Club—he is a past president, the Maple Shade Advisory Board of Commerce, and the Salvation Army. Chief Ryan also is a member and a Sir Knight of the Maple Shade Knights of Columbus. In addition, he is dedicated to many youth organizations throughout Burlington County.

Mr. President, I am pleased to join Chief Jim Ryan's colleagues and friends as he is honored by the Burlington County Chapter of the Knights of Columbus for his humanitarian efforts. His many years of public service, and his lifelong commitment to his community, are an inspiration to all of us.

I extend my warmest regards to Chief Ryan and his family, and my best wishes for good health and happiness.•

SUPPORT OF FULL FUNDING FOR THE AMERICAN MEMORIAL PARK AND THE WAR IN THE PACIFIC PARK TO COMMEMORATE THE 50TH ANNIVERSARY OF THE MARIANAS CAMPAIGN

• Mr. AKAKA. Mr. President, December 7 marks the 50th anniversary of the Japanese attack on Pearl Harbor, an event which catapulted the United States onto the world stage and forever changed the shape of modern history. As is proper, numerous highly publicized events marking that date will take place throughout the Nation, most notably and appropriately in Hawaii. I am honored to be a member of the delegation, headed by my colleague from Hawaii, Senator INOUYE, which will represent the U.S. Senate at the Pearl Harbor ceremonies.

But in the publicity surrounding Pearl Harbor, we should not forget another important semicentenary that will occur less than 3 years hence, in the summer of 1994, when we mark the liberation of Guam and the capture of the Northern Marianas Islands, including Saipan and Tinian, from Japanese forces during the latter stages of World

War II. These dearly bought victories, in which thousands of soldiers and civilians on both sides gave their lives, are representative of the island-hopping campaign which characterized the unique, ferocious war in the Pacific theater, and which led to the eviction of enemy forces from strategic island groups in the Central and Southwest Pacific and, eventually, to the surrender of Japan.

With my colleagues' forbearance, I would ask consent that a precis of the Marianas operations written by Robert Goldich, of the Congressional Research Service, be inserted in the RECORD following my remarks.

Mr. President, as a reminder of the personal face of war, and in particular the courage and sacrifice exhibited by our forces who fought in the Marianas, it would be instructive to relate the heroic actions of Lt. Col. William J. O'Brien, of the 1st Battalion, 27th Infantry Division, one of two who were awarded the Congressional Medal of Honor for acts of gallantry above and beyond the call of duty in the taking of Saipan. The citation accompanying the award reads:

When assault elements of his platoon were held up by intense enemy fire, Colonel O'Brien ordered three tanks to precede the assault companies in an attempt to knock out the strongpoint. Due to direct enemy fire the tanks turrets were closed, causing the tanks to lose direction and to fire into our own troops. Colonel O'Brien, with complete disregard for his own safety, dashed into full view of the enemy and ran to the leader's tank, and pounded on the tank with his pistol butt to attract two of the tank's crew and, mounting the tank fully exposed to enemy fire, Colonel O'Brien personally directed the assault until the enemy strongpoint had been liquidated. On June 28, 1944, while his platoon was attempting to take a bitterly defended high ridge in the vicinity of Donnay, Colonel O'Brien arranged to capture the ridge by the double envelopment movement of two large combat battalions. He personally took control of the maneuver. Colonel O'Brien crossed 1,200 yards of sniper-infested underbush alone to arrive at a point where one of his platoons was being held up by the enemy. Leaving some men to contain the enemy he personally led four men into a narrow ravine behind, and killed or drove off all the Japanese manning that strongpoint. In this action he captured five machine guns and one 77mm field piece. Colonel O'Brien then organized the two platoons for night defense and against repeated counterattacks directed them. Meanwhile he managed to hold ground. On 7 July 1944 his battalion and another battalion were attacked by an overwhelming enemy force estimated at between 3,000 and 5,000 Japanese. With bloody hand-to-hand fighting in progress everywhere, their forward positions were finally overrun by the sheer weight of the enemy numbers. With many casualties and ammunition running low, Colonel O'Brien refused to leave the front lines. Striding up and down the lines, he fired at the enemy with a pistol in each hand and his presence there bolstered the spirits of the men, encouraged them in their fight and sustained them in their heroic stand. Even after he was seriously wounded, Colonel O'Brien refused to be evacuated and after his pistol ammunition was exhausted, he manned a .50 caliber machine gun, mounted on a jeep, and continued firing. When last seen alive he was standing upright firing into the Japanese hordes that were then enveloping him. Some time later his body was found surrounded by enemy he had killed.

Mr. President, to commemorate the bravery exemplified in the highest degree by men such as Colonel O'Brien, Congress, in 1978, established the War in the Pacific Park, in Guam, and the American Memorial Park, in Saipan, Public Law 95-348 authorized a total of $19 million for park development; unfortunately, Mr. President, despite the significance of the Marianas campaign, and in spite of the rivers of blood spilled there by American servicemen, only $3 million has thus far been appropriated.

Mr. President, I have been informed of the state of these alleged national parks. Reports of rust corroding the tanks and cannon that are on public display; of weeds and grasses covering roads, walkways, and fences; of historic battlefields disappearing under dirt and vegetation; of graffiti scrawled on park signs and on the walls of the few existing park buildings. Mr. President, is this how we honor our war dead? Is this our tribute to those who fought for the freedom we now enjoy?

Mr. President, Guam's and Saipan's legitimate needs are often neglected by Washington because they lie thousands of miles from the west coast, in the middle of the Pacific Ocean, and because they either have limited representation in Congress, in the case of Guam, or no representation at all, in the case of the Northern Marianas Islands, a commonwealth under U.S. sovereignty. This is a natural, if unfair, state of affairs given the geographic and political realities under which these islands labor.

However, what is not natural, what is not to be excused, is that the parks to which I am referring are national parks, so designated by Congress, that ostensibly honor the memory of the approximately 5,700 U.S. troops killed or missing and the 21,900 wounded in the Marianas campaigns, men like Colonel O'Brien and our own distinguished colleague from Alabama, Senator HEFLIN, who participated in these operations. Their families and descendants, as well as the thousands of marines and soldiers who survived unscathed, for whom the words Saipan, Tinian, and Guam are synonymous with courage, duty, and sacrifice, live in every corner of our Nation. Each of us probably has many constituents whose lives were directly affected by the fight to free Guam and invade Saipan and Tinian. Thus, each of us has a duty to ensure that those who fought for freedom in our behalf are properly honored—albeit belatedly, but honored nonetheless.

Mr. President, from now through 1994, I intend to join several other colleagues in a concerted effort to secure such funding for the Guam and Saipan parks as is required to render them presentable for the 50th anniversary of the Marianas campaign. I urge all my colleagues who believe that what was worth fighting for in the Marianas in 1944 is now also worth honoring nearly 50 years later, who believe that the manner in which we treat those who fought and died in our behalf is a reflection of our own character, and who are convinced that the quality of our remembrance of things past, to paraphrase Proust, also determines our behavior as a nation in the future.

THE U.S. SEIZURE OF THE MARIANAS, JUNE-AUGUST 1944[1]

(By Robert L. Goldich, Specialist in National Defense, Foreign Affairs and National Defense Division, Congressional Research Service, the Library of Congress)

INTRODUCTION AND SUMMARY

Between June 15 and August 10, 1944, U.S. forces captured the Japanese islands of Saipan and Tinian, and liberated the U.S. territory of Guam—all together comprising some of the larger Mariana Islands—from the Japanese, U.S. casualties totalled approximately 5,700 killed and missing in action (KIA/MIA) and 21,900 wounded in action (WIA). The Japanese garrisons on all three islands were virtually annihilated, losing 54,000 dead and 2,900 prisoners. At the time of the ground operations, a major naval battle—the Battle of the Philippine Sea—was fought, which largely eliminated remaining Japanese naval airpower as well as sinking several major Japanese naval combatants.

The seizure of the Marianas severed Japanese lines of communication between Japan proper and those remaining Japanese bases and forces in the Central Pacific south of the Marianas and in the South Pacific as well. It provided, for the first time, island air bases from which U.S. land-based airpower could reach Japan itself. It provided large island areas on which advance bases could be constructed to support further operations against Japanese possessions and conquered territories such as Iwo Jima and Okinawa, the Philippines, Taiwan and the south China coast, and ultimately against Japanese home islands. Finally, the recapture of Guam liberated one of the few pieces of U.S. territory that was actually conquered by the enemy during World War II and restored U.S. government to over 20,000 native Guamanians.

BACKGROUND

The Marianas were Spanish possessions prior to the Spanish-American War of 1898. In the aftermath of that war, the victorious United States annexed Guam, and the other two islands were sold by Spain to Germany in 1899. Japan, which participated in World War I on the side of the Allies, captured Saipan and Tinian from Germany in 1914 and retained control of them after World War I ended.

Planning for the possibility of a U.S.-Japanese conflict became a major preoccupation of the U.S. Armed Forces as soon as the United States became a major territorial power in the Pacific in 1898, with the acquisition of the Philippines, Guam, American Samoa, and Hawaii. It had long been recognized that the Marianas occupied a critical strategic location in any contingent naval

[1] See Major Works Consulted, below, for basic sources used in preparing this report.

war between the United States and Japan, occupying as they do the center of a quadrilateral whose defining points are the Japanese home islands, the Philippines, Hawaii, and New Guinea.

There was little doubt, therefore, after the swift Japanese advance into the South and Central Pacific in 1941–1942 that U.S. forces would have to seize the Marianas. The islands were a significant Japanese defensive bastion, and their central location, as well as their desirability as sites for U.S. bases, made it impossible to bypass them. The issue was when they could be attacked and taken. The Cairo-Teheran Conferences of late 1943, held between President Franklin D. Roosevelt, British Prime Minister Churchill, and Soviet leader Joseph Stalin, resulted in a planning schedule for invasion of the Marianas on October 1, 1944.

However, several U.S. Pacific victories enabled this schedule to be advanced by several months. Between November 1943 and February 1944 U.S. forces seized key Japanese bases in the Gilbert (Tarawa, Makin) and Marshall (Kwajalein, Roi-Namur, and Eniwetok) Islands, bringing U.S. bases to within slightly over 1,000 miles of the Marianas. It was also decided to bypass rather than attack major Japanese strongholds at Truk, in the Caroline Islands, south of the Marianas. Accordingly, in March 1944 the Joint Chiefs of Staff ordered that the Marianas attack begin on June 15, 1944. The invasion plans finalized in May 1944 called for Saipan to be assaulted on June 15; once Saipan was secure, Tinian, only three miles south of Saipan, would be seized. Tentatively, Guam would be invaded on June 18, 1944, only three days after the landings on Saipan.

SAIPAN

After the fall of the Marshall Islands in February 1944 the Japanese realized that the Marianas would almost certainly be the next American objective in the Central Pacific. Between February and May 1944 the weak Japanese garrisons on Saipan, Tinian, and Guam were heavily reinforced with combat troops. U.S. submarines prevented some, but not most, Japanese troops and equipment sent to the islands from reaching their destination.

To seize Saipan from an estimated 18,000 Japanese (31,000 were actually on the island), the U.S. had earmarked the 2nd and 4th Marine Divisions. The Army's 27th Infantry Division was in general reserve for all Marianas operations, but most planning assumed it would probably be employed on Saipan. The three divisions plus supporting units totalled 71,000 Marines and soldiers. The two Marine divisions would attack across beaches on the southwestern corner of the island. Once securely ashore, the 2nd Marine Division, on the left (north) would turn northwards and conquer northern Saipan, while the 4th Marine Division on the right (south) would seize the southern third of the island.

By June 15, 1944, 25,000 Japanese Army and 6,000 Navy troops were on Saipan. Those beaches deemed suitable by the Japanese for a U.S. amphibious landing were heavily fortified and mined, and guarded by powerful forces. At this stage of the war, Japanese defensive doctrine still stressed defeat of American landings on the beach, rather than fighting a costly delaying action against the Americans once they had landed (as would be the case later in the war in the Palau Islands, the Philippines, Iwo Jima, and Okinawa).

After two days of naval gunfire and aerial attacks on the Japanese fortifications and troop dispositions, the two Marine divisions made their amphibious landing on the Saipan beaches on the morning of June 15. Despite the preparatory bombardment, it soon became apparent that Japanese resistance was formidable. In fact, D-Day on Saipan involved some of the heaviest casualties sustained by any U.S. division, Army or Marine Corps, in a single day during the entire war. Japanese artillery, mortars, machine guns, and small arms, fired from well-fortified positions largely invisible to the Marines, took a heavy toll of the assault Marines. The 2nd Marine Division sustained about 1,600 casualties on June 15. This was almost as many as it lost on the first day at Tarawa, November 20, 1943, more than the 1st Marine Division lost on the first day at Peleliu on September 15, 1944, and comparable to the number of Marines killed or wounded in the 4th and 5th Marine Divisions on the first day at Iwo Jima, February 19, 1945. The 4th Marine Division lost "only" 900–1,000 men killed or wounded on the first day at Saipan. Nonetheless, the Marines were on the island to stay, and Japanese counterattacks the first night failed to dent their beachhead.

Between June 16 and June 21, the American forces seized the southern third of Saipan, except for a small pocket of Japanese resistance on the southeastern tip of the island at Nafutan Point. The two Marine divisions were then reoriented northwards, to attack and destroy the formidable Japanese positions in central Saipan. The Army's 27th Infantry Division was landed to reinforce the Marines, largely due to the heavy casualties suffered by the Marine divisions. In six days of battle, the 2nd Marine Division had sustained 2,500 casualties and the 4th Marine Division over 3,600.

Between June 22 and June 30, the three U.S. divisions slowly fought their way through heavily wooded, hilly areas which constituted the heart of Japanese resistance on Saipan. The 2nd Marine Division seized Mount Tapotchau, the commanding geographical feature on Saipan, in moving roughly 1½ miles in eight days; the 27th Division and the 4th Marine Division gained between two and five miles through terrain with accurate, unpleasant characterizations such as Death Valley and Purple Heart Ridge. In addition, on the night of 26–27 June, the Japanese pocketed at Nafutan Point broke out in a desperate *banzai* charge, attacking rear areas and artillery units and ultimately losing over 550 dead in a suicidal assault far behind the front lines of the main battle.

By June 30, the backbone of Japanese resistance in central Saipan had been broken. The Japanese withdrew to their final defensive lines in northern Saipan; patrols ranged several thousand yards to the front of the American lines but found only small groups of the enemy. However, the two Marine divisions had paid dearly for their successes. In two weeks of combat, the 2nd and 4th Marine Divisions had each sustained 4,500 casualties. Because 80–90% of all losses were incurred by the 6,400 Marines in each division's 27 rifle companies—the basic close-in infantry fighting units—these figures indicate that those rifle companies had lost almost two-thirds of their men since D-Day. Because no Marine infantry replacements had yet arrived, Marines from support units were channeled into the infantry to replace casualties. Although the Army's 27th Division had not participated in the costly D-Day landing, it had lost almost 1,900 men itself.

Between July 1 and July 7, the 2nd Marine Division was withdrawn from combat, because the U.S. command wanted it to begin preparing for the invasion of Tinian. The 4th Marine Division and the 27th Division continued attacking the Japanese, and pocketed those remaining in the northern tip of the island. The last days of the Saipan battle were marked by two horrific developments. First, early on the morning of July 7, thousands of Japanese launched a suicidal mass attack on two isolated battalions of the 27th Division. "The soldiers fought for their lives as tremendous masses of the enemy flooded into a 300-yard gap between the battalions, discovered by enemy patrols the night before."[2] Overrunning the two battalions, the Japanese charged south into American artillery positions; the Americans fired their guns pointblank into the Japanese until they ran out of ammunition and the numerical weight of the Japanese assault was too great. The artillerymen then disabled their guns and retreated south, where they reached blocking positions held by other Army troops and Marines. The *banzai* charge cost the two Army infantry battalions 400 dead and 500 wounded (probably well over 50% of their strength); over 4,300 Japanese corpses were counted.

Second, in the aftermath of the continuing advance of the Marines (the Army's 27th Division was withdrawn into reserve after the *banzai* charge), with virtually all of the island in American hands, the Japanese repeated their World War II propensity for suicide rather than surrender. Not only did the few remaining Japanese soldiers and sailors kill themselves with their weapons as often as they would fire on U.S. Marines, but the Marines witnessed terrible sights of suicidal Japanese civilians. At Marpi Point on the northwestern corner of the island, "Hundreds of Japanese civilians, fearful of the Americans, committed suicide by jumping from the seaside cliffs. Some took their children with them. Efforts to stop them fell upon ears deafened by Japanese propaganda. Fortunately, many civilians had previously surrendered amicably, entrusting their fate to Marine and Army civil affairs officers, and were grateful for the care and safety found in the internment camps."[3]

On July 9, after 25 days of battle, the U.S. command declared the island secured, although Japanese stragglers continued to be rounded up or killed until the end of the war—and for many years thereafter. U.S. casualties totaled 3,600 KIA and MIA and 13,100 WIA. About 2,000 Japanese prisoners were taken; the other 29,000 Japanese troops on the island were killed. Both U.S. and Japanese leaders tended to agree about the significance of the American victory. Marine Lt. Gen. Holland M. Smith, commander of the Saipan landing force, stated that the capture of Saipan was "the decisive battle of the Pacific offensive" and that its seizure "breached Japan's inner defense line, destroyed the main bastions, and opened the way to the home islands."[4] The verdict of Japanese Prime Minister Hideki Tojo, whose government was soon to fall—partly in response to the loss of the Marianas—was more succinct; "Hell is on us."

TINIAN

There was never any doubt that Tinian would have to be seized by U.S. forces. Only

[2] Henry I. Shaw, Jr., Bernard C. Nalty, and Edwin T. Turnbladh. "Central Pacific Drive. History of U.S. Marine Corps Operations in World War II. Volume III." Washington, Historical Branch, G-3 Division, Headquarters, U.S. Marine Corps, 1966: 340.

[3] Ibid.: 345.

[4] Gen. Holland M. Smith, USMC (Ret.), and Percy Finch, "Coral and Brass," New York, Charles Scribner's Sons, 1949: 181.

three miles south of Saipan, its continued possession by the Japanese would have left U.S. bases and facilities on the former island vulnerable to bombardment and raids. In addition, Tinian was relatively flat, and therefore the best suited of the Marianas for airfields from which U.S. long-range bombers could strike the Japanese home islands.

U.S. plans called for the 2nd and 4th Marine Divisions, after a two-week respite from the costly Saipan campaign, to launch an amphibious attack against Titian. In reserve, also similar to the Saipan order of battle, was the 27th Infantry Division.

The major problem confronting the U.S. command was where on Titian the assault Marines should land. The island has only three beaches "worthy of the name."[5] The largest and best-suited for amphibious operations is on the southwestern corner of the island, near Titian Town, the major "city" on the island. A much smaller beach lies directly across Tinian from the southwestern beaches, on the southeastern side of the island. On the far northwestern corner of Tinian are two small beaches, one 60 and the other 160 yards wide. After great deliberation and careful clandestine reconnaissance, the Marine and Navy amphibious planners decided to land on the northern beaches, on the assumption that the Japanese would not believe that U.S. forces could support a massive amphibious assault across such narrow beaches. In addition, the northern beaches were very close to southern Saipan, easing movements of supplies and troops between the two islands, and enabling Saipan-based U.S. artillery to support the initial U.S. assault. The decision to attack the northern beaches was a gamble, because determined Japanese opposition, combined with the narrowness of the beaches, could lead to disaster, with the Marines jammed into the beaches and unable to move beyond them under Japanese fire.

To maintain the element of tactical surprise, the Marines and other services were careful to do nothing which would lead the Japanese to believe that the attack would come across the northern beaches. Artillery and air support, air and ground reconnaissance, were directed at all areas of Tinian, not just the northern beaches. The U.S. decision was fully justified by events. The Japanese commander of the 8,900 Japanese troops on Tinian expected the Americans to come across the southwestern beaches, possibly the southeastern ones, and had constructed fortifications and disposed his troops accordingly.

U.S. artillery began firing on Tinian only five days after the initial landings on Saipan, on June 20. On July 12, it was agreed that D-Day for Tinian would be July 24. On July 23, heavy U.S. artillery bombardments and air strikes against targets all over the island began, and the assault components of the 4th Marine Division boarded landing craft for the short journey of a few miles from Saipan to Tinian.

D-Day at Tinian, July 24, was an immense contrast to the bloody D-Day on Saipan over five weeks earlier. Two regiments of the 4th Marine Division landed on the northern beaches and rapidly pushed inland against light resistance. Marine casualties totalled 15 dead and 225 wounded, less than a tenth of D-Day losses on Saipan. On the night of July 24–25, a hastily-mounted Japanese counterattack was utterly smashed; over 1,200 counted Japanese dead in front of the 4th Marine Division's positions constituting fully one-seventh of the entire Japanese force on the island. The American decision to land on the narrow northern beaches had been fully vindicated.

On July 25–26, the 2nd Marine Division was landed and joined the 4th Marine Division in a steady drive south. While Japanese resistance was fierce in some places and at some times, from the perspective of higher commanders the battle went much more smoothly than the conquest of Saipan. By July 31, remaining Japanese organized resistance had been compressed into a small, thin strip of land against the southeastern coast of Tinian. After two more days of combat, marked by occasional last-ditch *banzia* charges, but mercifully not be the mass suicide of Japanese civilians seen on Saipan, Tinian was declared secure on August 1, 1944.

"A statement like that, however, was a sort of partial truth on any Pacific territory captured from the Japanese. On Tinian, even more than elsewhere, the residue of the enemy force was troublesome. Some of the Japanese soldiers preferred self-destruction to surrender, but the proportion of soldiers and civilians that committed suicide was smaller than on Saipan. The Japanese soldier that chose to live was a die-hard type, able to hide out for months."[6] Thus, one regiment of the 2nd Marine Division that remained on the island to flush out Japanese stragglers lost about 40 killed and 125 wounded between August 1, 1944 and January 1, 1945, killing 500 Japanese after the official "securing" of the island.

Total U.S. casualties on Tinian totalled approximately 300 KIA and 1,600 WIA; although figures vary depending on the sources consulted, it appears that all of the 8,900 Japanese on the island were eventually killed except for slightly over 300 prisoners taken. The least costly of the three Marianas islands battles, Tinian arguably resulted in the greatest dividends for the further prosecution of the war, due to its suitability for airfield construction to support the strategic air offensive against Japan.

GUAM

It had originally been planned that U.S. forces would assault Guam on June 18, 1944, only three days after the initial landings on Saipan. However, several developments required the postponement of the Guam operation for over a month. First, by June 15 the prospects of an approaching naval battle with the Japanese—what became the American victory in the Battle of the Philippine Sea during June 19–20—forced U.S. naval commanders to redeploy their ships away from the Marianas to meet the approaching Japanese fleet. The Japanese naval threat had to be neutralized before the U.S. Navy could cover and support a major amphibious landing on Guam. Second, the ferocity of Japanese resistance on Saipan required the commitment of the entire 27th Infantry Division, in reserve for the entire Marianas operation. Another Army unit—the 77th Infantry Division, in Hawaii—would have to be committed to Guam. Finally, it was not clear until early July that the 77th Division, or parts of it, would not be needed on Saipan as well. All of these factors led to the postponement of the invasion of Guam until July 21, 1944.

In preparing for the liberation of Guam, American planners had to take several factors into account which did not apply to Saipan and Tinian. "Guam is the largest island north of the equator between Hawaii and the Philippines. With an area of 225 square miles, it is three times the size of Saipan and measures 30 miles long by 4 to 8½ miles wide."[7] Its size posed both problems and opportunities for maneuver, delay, and logistical support not found on the smaller islands.

As a U.S. possession, Guam was going to be liberated, not conquered by U.S. forces. There were about 24,000 native Guamanians on the island in 1944, and the U.S. command had to be prepared to provide for the restoration of services and adequate living standards to people who had remained almost uniformly loyal throughout almost three years of Japanese occupation:[8]

"Slightly over a hundred were of mixed American and Chamorro [native Guamanian] parentage and had been jailed as soon as the Japanese occupied the island. The rest of the population suffered some organized maltreatment and abuse in the early days of Japanese rule, but this appeared to have gradually tapered off. However, rigid food rationing, forced labor, confiscation of property without compensation, exclusion from business enterprises, and a score of lesser deprivations and humiliations kept the native population sullen and restive during the period of Japanese occupation. In June 1943 all able-bodied men between the ages of fourteen and sixty were forced to work for the occupation army, and women were ordered to replace the men in the fields. After the American air raid of 11 June [1944], large numbers of natives fled to the hills. Many were rounded up by Japanese military police and placed in camps. . . . The Guamanians were clearly poor raw material for collaborationism, and there is no evidence that the Japanese made any successful attempt to reconstruct them to that end."

As was the case with Saipan and Tinian, the Japanese did not begin preparing to defend Guam against American assault until February-March 1944, after the fall of the Marshall Islands. Japanese defensive preparations were not as extensive as those on Saipan—certainly not in proportion to the size of the island. By late July 1944, the Guam garrison totalled about 18,500 Japanese troops, compared to the 30,000 that had been on Saipan. Unfortunately for the Marines making the assault landings on Guam, however, the terrain of the island—the locations of suitable beaches, harbors, and airfields—limited American options. Furthermore, having invaded the island themselves in December 1941, the Japanese had studied Guam from the point of view of likely objectives for an amphibious assault. When the Marines came ashore, therefore, they would do so into the heart of Japanese defensive positions, fortifications, and troops on Guam.

All of the beaches to be attacked were on the western side of Guam. Those beaches north of the Orote Peninsula, which jutted out into the ocean in a western direction from the center of western Guam, would be the objectives of the 3rd Marine Division. The 1st Provisional Marine Brigade, composed of two Marine infantry regiments and supporting arms and services, and therefore consisting of the equivalent of ⅔ of a division (a Marine division having three infantry regiments at full strength), would attack the beaches south of the peninsula.

The D-Day air and naval bombardment of the Guam beaches was both heavier and

[5] Shaw, Nalty, and Turnbladh, "Central Pacific Drive": 358.

[6] Ibid.: 421.

[7] Ibid.: 439.

[8] Philip A. Crowl. "Campaign in the Marianas. The War in the Pacific. United States Army in World War II." Washington, Office of the Chief of Military History, Department of the Army, 1960; 332.

more precise than that directed against the Saipan beaches, due to the disappointing results of the Saipan bombardment and the heavy losses the Marines sustained on Saipan D-Day. However, the Japanese on both the northern beaches (being attacked by the 3rd Marine Division) and the southern beaches (the 1st Marine Brigade) still had plenty of fight left in them when the first amphibious assault vehicles headed for the shore the morning of July 21, 1944.

Resistance was heaviest on the left flank and the center of the 3rd Marine Division's attack zone. Here the Marines had to attack up steep cliffs that rose just behind the beaches—cliffs that included many caves which proved impervious to the preassault air and naval bombardment. Nonetheless, by the end of D-Day the 3rd Marine Division was ashore all along the line at the cost of about 160 Marines KIA and MIA and 540 WIA. Supplies and supporting artillery were ashore, and the troops of the 3rd Marine Division began bracing themselves for the usual Japanese counterattack.

Resistance was less intense, but still substantiantial, on the southern beaches. Although the 1st marine Brigade was not facing the cliffs and caves of the 3rd Marine Division, numerous Japanese defenders made its task a difficult one. Japanese artillery and mortars inflict many casualties on the beaches, and the artillery fire continued as brigade troops moved inland. However, by early evening the two Marine regiments of the brigade were ashore at the cost of about 350 Marine casualties, and one of the three regiments of the Army's 77th Infantry Division, as well as both Marine and Army artillery, was ashore by the early morning of July 22.

Surprisingly, it was the southern beachhead that was hit by a full-scale Japanese counterattack on the night of July 21–22, not the more vulnerable positions of the 3rd Marine Division in the north. By dawn of July 22, the 1st Marine Brigade had killed over 600 Japanese at the cost of about 50 dead and 100 wounded of its own, and virtually annihilated an attacking Japanese regiment.

Between July 22 and July 24 the 1st Marine Brigade turned north, reinforced eventually by the entire 77th Infantry Division, and sealed off the Orote Peninsula, which separated the northern and southern beachheads. At the same time, the 3rd Marine Division gained very little ground due to extremely rough terrain and fierce Japanese resistance. By the close of July 24, the first four days of battle on Guam had cost the Marine brigade 220 KIA and MIA and 700 WIA. The 3rd Marine Division had lost over 400 KIA and MIA and almost 1,300 WIA.

By the evening of July 25, the 3rd Marine Division was in bad shape. It had sustained almost two thousand battle casualties since landing on Guam; "the division lines had been stretched more than 9,000 yards. The regiments and battalions had almost no reserves to call on, and even [the] division had only one depleted battalion in reserve. Should the enemy choose this time and place for an organized counterattack, the situation for the Marines could hardly have been worse. Unfortunately the Japanese did so choose."[9]

During the night of July 25–26, the equivalent of two-thirds of a Japanese division struck the lines of the 3rd Marine Division in a characteristic *banzai* charge. At the same time, a smaller Japanese counterattack was launched from the Orote Peninsula against the 1st Marine Brigade. Although the fighting was heavy, and seesawed back and forth in the 3rd Marine Division sector, by the morning of July 26 the Japanese attackers had been virtually annihilated. An estimated 3,500 Japanese were killed on Guam during the few hours of the counterattack. This Japanese failure "broke the back" of Japanese resistance on Guam, as the Japanese commander acknowledged in radio messages to Tokyo.

The rest of the battle for Guam consisted of two main actions. Between July 25 and July 30 the 1st Marine Brigade captured the Orote Peninsula from stubborn Japanese defenders who, cut off from their fellows on the rest of the island, nonetheless went down fighting, losing over 1,600 dead (compared to 150 Marine KIA and MIA and 720 WIA) in the process. Simultaneously, the 3rd Marine Division and the Army's 77th Infantry Division, committed as a full division for the first time, swung to their left and drove toward the northern end of Guam. Once 77th Division reconnaissance patrols had determined that there were no substantial Japanese forces in southern Guam, both American divisions attacked northwards. By August 10, 1944, the island had been secured, although stragglers continued to surrender—or be killed—until the end of the war, and some did not come out of the jungles until the 1960s and 1970s. U.S. casualties on Guam totalled 1,900 KIA/MIA and 7,100 wounded; although precise figures vary, it appears that with the exception of about 500 prisoners, the entire Japanese garrison of 18,500 was killed or died.

CONCLUDING OBSERVATIONS

The successful capture of Saipan and Tinian, and the liberation of Guam, represented the maturation of U.S. amphibious warfare doctrine and techniques. These operations marked the culmination of decades of careful thinking by U.S. Marine planners about how to wrest heavily-defended island targets from a determined Japanese foe. By the time Guam was secured, there was confidence that *any* Japanese-held island—including any of the Japanese home islands—could be attacked and taken by American forces, albeit frequently at very high cost in American casualties.

The seizure of the Marianas, therefore, did more than (1) breaching another set of Japanese defenses that stood between U.S. forces and the Japanese home islands and (2) providing air bases from which U.S. land-based bombers could strike at Japan proper. The Marianas operations ended with the U.S. Armed Forces confident about ultimate victory—confidence they would need for the even more costly, and more ferocious Central Pacific island battles yet to come—Peleliu in September-December 1944, Iwo Jima in February-March 1945, and Okinawa in April-June 1945. That confidence would have been put to the greatest test of all had the United States been required to invade and capture the southern Japanese home island of Kyushu on November 1, 1945, as planned in the summer of 1945, or even occupy the central island of Honshu, with an invasion tentatively planned for March 1, 1946.

Most believe that what made the invasion of Japan proper unnecessary was, in large part, the strategic air offensive against Japan staged from the Marianas. Massive airfield development on all the islands, but especially Tinian, provided the bases from which U.S. Army Air Forces B-29 bombers mounted huge air raids against Japanese cities and economic infrastructure, beginning in late 1944 but accelerating in February-March 1945. The catastrophic effects of this conventional bombing campaign, combined with the atomic bombings of Hiroshima and Nagasaki in August 1945 (also staged from Tinian), ultimately tipped the scales within the Japanese government in favor of surrender in mid-August.

MAJOR WORKS CONSULTED

Philip A. Crowl. "Campaign in the Marianas. The War in the Pacific. United States Army in World War II." Washington, Office of the Chief of Military History, Department of the Army, 1960. 505 p.

Leckie, Robert, "Strong Men Armed: The United States Marines against Japan." New York, Ballantine Books Edition, 1962: 313–87.

Henry I. Shaw, Jr., Bernard C. Nalty, and Edwin T. Turnbladh. "Central Pacific Drive. History of U.S. Marine Corps Operations in World War II. Volume III." Washington, Historical Branch, G-3 Division, Headquarters, U.S. Marine Corps, 1966. 685 p.

T. Dodson Stamps and Vincent J. Esposito (Editors). "A Military History of World War II, With Atlas. Volume II: Operations in the Pacific and Mediterranean Theaters." West Point, New York, United States Military Academy, 1953: 384–88.•

[9] § Ibid.: 363–64.

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Richard D. Finn, Jr., a member of the staff of Senator NUNN, to participate in a program in China sponsored by the Chinese People's Institute of Foreign Affairs in conjunction with the United States-Asia Institute on November 30 to December 15, 1991.

The committee has determined that participation by Mr. Finn in this program, at the expense of the Chinese People's Institute of Foreign Affairs in conjunction with the United States-Asia Institute, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Laurie Schultz Heim, a member of the staff of Senator JEFFORDS, to participate in a program in China sponsored by the Chinese Cultural University on December 9–16, 1991.

The committee has determined that participation by Ms. Heim in this program, at the expense of the Chinese Cultural University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule

35 for Robert Tyrer, a member of the staff of Sentor COHEN, to participate in a program in Taiwan sponsored by the Soochow University on December 4–10, 1991.

The committee has determined that participation by Mr. Tyrer in this program, at the expense of the Soochow University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Wayne Abernathy, a member of the staff of Senator RIEGLE, to participate in a program in Austria sponsored by the Austrian Federal Economic Chamber on December 7–14, 1991.

The committee has determined that participation by Mr. Abernathy in this program, at the expense of the Austrian Federal Economic Chamber, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Richard Kessler, a member of the staff of Senator PELL, to participate in a program in Korea sponsored by the Korean Ministry of Foreign Affairs on December 7–14, 1991.

The committee has determined that participation by Mr. Kessler in this program, at the expense of the Korean Ministry of Foreign Affairs, is in the interest of the Senate and the United States.●

ALBERT EINSTEIN CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. CHAFEE. Mr. President, I send a resolution to the desk on behalf of Senator HATFIELD and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 239) reauthorizing 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. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (S. 239) was agreed to as follows:

S. RES. 239

SECTION 1. SHORT TITLE.

This resolution may be referred to as the "Albert Einstein Senate Fellowship Program Resolution".

SECTION 2. REAUTHORIZATION.

The authority provided in Senate Resolution 173 of the One Hundred-second Congress (agreed to on August 2, 1991), as amended by Senate Resolution 208 of the One Hundred-second Congress (agreed to on October 25, 1991), and further amended by Senate Resolution 228 of the One Hundred-second Congress (agreed to on November 21, 1991), is hereby reauthorized in accord with the provisions of this resolution.

SECTION 3. FELLOWSHIP PROGRAM.

(a) IN GENERAL.—The President pro tempore of the Senate is authorized to enter into an agreement with the Triangle Coalition for Science and Technology Education (hereafter in this resolution referred to as "Coalition") to establish an Albert Einstein Senate Fellowship Program (hereafter in this resolution referred to as the "fellowship program"), which, beginning with the fiscal year 1991, provides for two fellowships in the Senate for each fiscal year.

(b) RESPONSIBILITIES.—The President pro tempore of the Senate may enter into the agreement described in subsection (a), and authorize the expenditure of funds pursuant to section 4(e), only if the Coalition—

(1) undertakes the application responsibilities referred to in section 4(a);

(2) participates in the evaluation referred to in section 5; and

(3) provides the funding for administration and evaluation costs referred to in section 6(b), and partial compensation referred to in section 4(e)(1)(A).

SECTION 4. SELECTION PROCESS.

(a) Application Responsibilities.—The Coalition shall—

(1) develop and administer an application process in accord with subsection (d);

(2) publicize the fellowship program; and

(3) conduct an initial screening of applicants for the fellowship program.

(b) SELECTION.—Each fiscal year the President pro tempore of the Senate, upon the recommendation of the Majority Leader, in consultation with the Minority Leader, shall select the two recipients of the Senate fellowships from among the applicants processed under subsection (a).

(c) PLACEMENT OF FELLOWSHIPS.—

(1) The president pro tempore of the Senate, upon the recommendation of the Majority Leader, in consultation with the Minority Leader, and the chairmen and ranking minority party members of the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation of the Senate, may place one fellowship recipient on the staff of the Committee on Labor and Human Resources, and may place one fellowship recipient on the staff of the Committee on Commerce, Science, and Transportation.

(2) Not withstanding paragraph (1), either or both fellowship recipients may instead be placed on the personal staff of a member of the Senate.

(d) ELIGIBLE RECIPIENTS.—Applicants screened under subsection (a) shall be from among a pool of nationally recognized outstanding secondary school science and mathematics teachers. The pool shall include teachers who have received Presidential Awards for Excellence in Science and Mathematics Teaching, as established by section 117(a) of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1881b), or other similar recognition of skills, experience, and ability as science or mathematics teachers.

(e) COMPENSATION.—

(1) Each recipient of a Senate fellowship shall be compensated—

(A) in party by the Coalition;

(B) in part from funds made available under section 6(a).

(2) The President pro tempore of the Senate shall fix the compensation of each recipient authorized in paragraph (1)(B) at not to exceed one-half of the funds authorized to be available for each respective fiscal year under section 6(a).

(f) LENGTH OF TERM.—Each fellowship recipient shall serve for a period of ten months.

SECTION 5. EVALUATION.

The Chairman of each committee or the member of the Senate in whose office a fellowship recipient is placed, and the Executive Director of the Coalition shall submit to the President pro tempore of the Senate an annual report evaluating the fellowship program, and shall make recommendations concerning the continuation of the program.

SECTION 6. FUNDING.

(a) FELLOWSHIPS—For fiscal years 1991, 1992, and 1993, the funds authorized to compensate Senate fellowship recipients under section 4(e) shall be paid from the contingent fund of the Senate, but not to exceed a total of $40,000 in fiscal year 1991 with such funds to remain available through September 30, 1992, $42,500 in fiscal year 1992, and $45,000 in fiscal year 1993 for the Senate fellowships.

(b) ADMINISTRATION AND EVALUATION.—The Coalition shall provide the funds necessary for the administration of the fellowship program, and for evaluations conducted pursuant to section 5.

SECTION 7. SUPERSEDING PREVIOUS AUTHORITY.

This resolution supersedes the resolutions referred to in Section 2.

SECTION 8. TERMINATION DATE.

The provisions of this resolution shall terminate September 30, 1993.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

AMENDING THE PUBLIC HEALTH SERVICE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3635, a bill to amend the Public Health Service Act to revise and extend the program of block grants for preventive health and health services, received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3635) 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.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1456

(Purpose: To provide for a substitute amendment)

Mr. FORD. Mr. President, I send on behalf of Senator KENNEDY a substitute 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 Kentucky [Mr. FORD], for Mr. KENNEDY, proposes an amendment numbered 1456.

Mr. FORD. 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 text of the amendment is printed in today's RECORD under "Amendments Submitted.")

• Mr. HARKIN. Mr. President, I rise in strong support of the Health Promotion and Disease Prevention Amendments of 1991. I want to commend the distinguished chairman of the Labor and Human Resources Committee for his continuing leadership in efforts to improve the health care available to Americans. I also want to thank him for his willingness to work with me to bring this major package of health promotion and disease prevention initiatives before the Senate. S. 1944 is among the most important pieces of health legislation the Senate will consider this session.

Mr. President, I believe that the most fundamental flaw in our health care system today is its preoccupation with patching and mending and its virtual neglect of prevention and health promotion. What we really have is not a health care system but a sick care system. Over half of the $700 billion we will spend this year on health care will go to treat conditions that are preventable. Yet, only a tiny fraction, estimated by some to be less than 1 percent, of our health care budget is spent on keeping people healthy and preventing the need for this expensive treatment. As a result of this flaw, the quality and length of the lives of many Americans are needlessly reduced and billions of dollars are needlessly wasted. We need to overhaul our sick care system into an American health care system of which we can all be proud. This takes us a step further toward completing that weighty task.

I am very pleased that a number of my ideas and components of my "Prevention First" initiative are contained in this bill. A major element is its reauthorization of the Preventive Health and Health Services block grant. This important program is the backbone of State and local public health efforts. It funds a full range of key disease prevention and health promotion services provided to Americans in every State and locality—from hypertension screening, to health education, to breast cancer screening to smoking cessation programs. S. 1944 would expand and strengthen this program, building upon my legislation of last year, the Health Objectives 2000 Act. This legislation, signed into law by the President, paved the way for implementation of the National Health Promotion and Disease Prevention Objectives.

This part of S. 1944 first provides increased capacity and resources to States and localities to assist them in achieving the Year 2000 National Health Objectives, addressing improvements in health status, risk reduction, public and professional awareness, health services and protective measures, and surveillance and evaluations. Second, it creates and develops and effective partnership of Federal, State, and local health agencies, voluntary health organizations, and other health groups, including minority community-based organizations, to develop initiatives for preventing disease and disability. Third, it enables States and localities to address national health policy issues. All of these provisions will greatly improve our public health system and the health of Americans. They are long overdue.

S. 1944 also incorporates S. 507, the Lead Poisoning Prevention Act, legislation I introduced on behalf of myself and a number of our colleagues. Inclusion of S. 507 attacks the No. 1 preventable disease among children—lead poisoning. Conservative estimates indicate that more than 3.5 million American children from all walks of life have dangerous levels of lead in their blood. And we know the devastating impact lead poisoning can have on our children. We know that even healthy appearing children with modest lead elevations often display poor academic performance, low IQ scores, impaired hearing, unsatisfactory speech and language development, and disruptive classroom behavior. A recent study found that lead poisoned children are seven times more likely to drop out of school before graduating from high school.

The costs of lead poisoning are staggering and the cost effectiveness of screening for it is clear. The annual cost of remedial education and health care needed as a result of childhood lead poisoning alone totals over $1 billion. Screening and early detection for lead poisoning saves by more that 50-fold the immediate cost of treatment. Yet, there is a sorrowful lack of awareness regarding the perils of lead poisoning, the benefits of screening and the resulting preventive and treatment measures that can be taken to combat this problem.

S. 507 attacks this problem by expanding support to States and localities to screen children, establishing a national education program to increase awareness among children, parents, teachers, and health professionals about lead poisoning, developing a more cost effective accurate test to screen for lead poisoning, and finally to make certain that the actions of different Federal agencies responding to the problem of lead poisoning are properly coordinated. These steps will save lives and money.

Mr. President, S. 1944 also incorporates the provisions of S. 505, another component of my "Prevention First" legislative package. This bill would change the name of our Nation's flagship Federal agency on prevention, the Centers for Disease Control [CDC], to the Centers for Disease Prevention and Control [CDC]. This change appropriately recognizes CDC's central role in our national efforts to prevent disease and disability and will give greater national visibility to these efforts. This simple change will also demonstrate our commitment to increasing the focus of our efforts in health care on prevention and elevate prevention to its appropriate high level within the structure of government health care programs. I want to commend CDC for their strong work and commitment to improving the public health. I want to especially commend Dr. Bill Roper who I think is doing a fine job heading up CDC. I am very pleased to have his support for making this change.

I have been placing top priority in my capacity as chairman of the Senate subcommittee that funds health, education, and social services programs on programs that prevent disease and disability. In the fiscal year 1992 funding bill which is now in the President's hands, we have provided significant increases in funding for prenatal care, chronic and environmental disease prevention, disability prevention, childhood immunizations, and many other critical preventive programs. At my urging, and particularly relevant to the bill before us today, the fiscal year 1992 funding bill contains a more than tripling of funds aimed at lead poisoning prevention and a 40-percent increase in the prevention block grant program.

So through these appropriations and through adoption of this authorizing legislation, we are making a downpayment on what needs to be done to turn our "sick" care system into an American "health" care system of which we can be proud.

Mr. President, I again commend you for bringing this legislation before us. I hope that we can move without hesitation to send it to the President for final approval.•

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the amendment in the nature of a substitute.

The amendment (No. 1456) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 3635), as amended, was passed.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate insist

on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate.

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

There being no objection, the Presiding Officer (Mr. CONRAD) appointed Mr. METZENBAUM, Mr. HARKIN, Mr. HATCH, and Mrs. KASSEBAUM to be conferees on the part of the Senate.

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3866, a bill to provide for the designation of the Flower Garden Banks National Marine Sanctuary just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3866) to provide for the designation of the Flower Garden Banks National Marine Sanctuary.

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. INOUYE. Mr. President, this measure would make fundamental changes in a longstanding law which deals with a very serious subject—gambling aboard U.S. passenger cruise vessels. Because it does, I would have preferred that the Senate Merchant Marine Subcommittee give H.R. 3282 the same extensive study and analysis which the House committee gave it.

Nevertheless, in a spirit of cooperation in the closing days of this session I will put aside my misgivings based on my understanding that the text of H.R. 3282 as included in the amendment to H.R. 3866 prohibits gambling aboard U.S.-flag and foreign-flag passenger cruise vessels during segments of their voyages among the Hawaiian Islands, even when those segments are on the high seas; and that gambling aboard vessels on voyages among the islands of Hawaii, such as currently undertaken by the SS *Independence* and the SS *Constitution*, continue to be prohibited.

Specifically, it is my understanding based on the House report to accompany H.R. 3282, that gambling on voyages between two points in a State would be prohibited if the State in which they are operating has a law prohibiting gambling activities on these voyages.

For example, the State of Hawaii has enacted a law—chapter 72 of the Hawaii Revised Statutes—prohibiting gambling activities on a vessel that embarks from any point within the State, and disembarks at the same or another point within the State, except on travel from the continental United States or a foreign country. Therefore, under H.R. 3282 gambling would be prohibited on any U.S.- or foreign-flag vessel that is on a voyage, or a segment of a voyage, that sails from a place in Hawaii to another place in Hawaii.

The types of segments of a voyage covered under these restrictions are those legs of a larger voyage during which the vessel leaves one point in a State and arrives either at the same point or another point in the same State, without an intervening stop in another State or a foreign country. This segment may include periods of time during which the vessel is operating in international waters.

Therefore, a vessel leaving either California or Mexico, for example, could have gambling activities on board until the vessel reaches Hawaiian waters. Then, the gambling facilities must be closed. The vessel would not be allowed to have gambling operations during the segments of the voyage during which it is sailing to other islands in Hawaii, even though segments of the interisland voyage are on the high seas.

May I ask the junior Senator from Louisiana if my understanding is correct?

Mr. BREAUX. The Senator from Hawaii is absolutely correct.

Mr. INOUYE. I thank the Senator from Louisiana, and with that understanding I shall not object to consideration of the provisions of H.R. 3282.

AMENDMENT NO. 1457

(Purpose: To make an amendment in the nature of a substitute)

Mr. FORD. Mr. President, I send a substitute amendment to the desk on behalf of Senator BREAUX.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BREAUX, proposes an amendment numbered 1457.

Mr. FORD. Mr. President, I ask unanimous consent that further 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:

TITLE I—NATIONAL MARINE SANCTUARY

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

SEC. 101. Notwithstanding section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b))—

(1) the Secretary of Commerce shall, on January 17, 1992 (or as soon thereafter as is practicable), publish under that Act in the Federal Register a notice of designation of the Flower Garden Banks National Marine Sanctuary, as described in the notice of designation submitted to the Congress on November 20, 1991: and

(2) that designation shall take effect on January 17, 1992.

TITLE II—MERCHANT MARINE PROVISIONS

NON-VESSEL-OPERATING COMMON CARRIERS

SEC. 201.(a) SHORT TITLE.—This section may be cited as the "Non-Vessel-Operating Common Carrier Act of 1991".

(b) PROHIBITED ACTS.—Section 10(b) of the Shipping Act of 1984 (46 U.S.C. App. 1709(b)) is amended—

(1) in paragraph (14), by inserting ", insurance, or other surety" after "bond"; and

(2) in paragraph (15), by inserting ", insurance, or other surety" after "bond".

(c) SURETY FOR NVOCC'S.—Section 23 of the Shipping Act of 1984 (46 U.S.C. App. 1721), is amended—

(1) in the section heading by striking "BONDING OF" and inserting in lieu thereof "SURETY FOR";

(2) by amending subsection (a) to read as follows:

"(a) SURETY.—Each non-vessel-operating common carrier shall furnish to the Commission a bond, proof of insurance, or such other surety, as the Commission may require, in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier. Any bond submitted pursuant to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.";

(3) by striking subsection (b) and redesignating subsections (c) through (e) as subsections (b) through (d), respectively;

(4) in subsection (b), as so redesignated—

(A) by striking "BOND" in the subsection heading and inserting in lieu thereof "SURETY";

(B) by inserting ", insurance, or other surety" after "bond"; and

(C) by inserting "under this Act" after "transportation-related activities"; and

(5) in subsection (d), as so redesignated—

(A) by inserting ", insurance, or other surety" after "bond"; and

(B) by striking "subsection (d)" and inserting in lieu thereof "subsection (c)".

(d) INTERIM RULES AND REGULATIONS.—The Federal Maritime Commission may prescribe interim rules and regulations necessary to carry out the amendments made by this section.

(e) CONFORMING AMENDMENT.—The item relating to section 23 in the table of contents in the first section of the Shipping Act of 1984 is amended by striking "Bonding of" and inserting in lieu thereof "Surety for".

(f) EFFECTIVE DATE.—This section shall become effective 90 days after the date of its enactment.

CLARIFICATIONS OF, AND LIMITATIONS ON, GAMBLING DEVICES PROHIBITIONS

SEC. 202. (a) TRANSPORT TO A PLACE IN A STATE, ETC.—Section 2 of the Act of January 2, 1951 (15 U.S.C. 1172; commonly referred to as the "Johnson Act"), is amended—

(1) by inserting before the first paragraph the following: "(a) GENERAL RULE.—";

(2) in subsection (a) (as so designated) by striking ", District of Columbia,";

(3) by inserting before the second paragraph the following: "(b) AUTHORITY OF FEDERAL TRADE COMMISSION.—"; and

(4) by adding at the end the following:

"(c) EXCEPTION.—This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

"(1) use of the gambling device on a portion of that voyage is, by reason of sub-

section (b) of section 5, not a violation of that section; and

"(2) the gambling device remains on board that vessel while in that State.".

(b) REPAIR, OTHER TRANSPORT, ETC.—Section 5 of that Act (15 U.S.C. 1175) is amended—

(1) by inserting before "It shall be unlawful" the following: "(a) GENERAL RULE.—";

(2) by inserting before the period at the end the following: ", including on a vessel documented under chapter 121 of title 46, United States Code, or documented under the laws of a foreign country'" and

(3) by adding at the end the following:

"(b) EXCEPTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section does not prohibit—

"(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States; or

"(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if—

"(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

"(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of the State possession.

"(2) APPLICATION TO CERTAIN VOYAGES.—

"(A) GENERAL RULE.—Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair on use on that voyage or segment.

"(B) VOYAGE AND SEGMENT DESCRIBED.—A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively—

"(i) that begins and ends in the same State or possession of the United States, and

"(ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.".

(c) BOUNDARIES DEFINED.—The first section of that Act (15 U.S.C. 1171) is amended by adding at the end the following:

"(f) The term 'boundaries' has the same meaning given that term in section 2 of the Submerged Lands Act.".

The PRESIDING OFFICER. Are there amendments to the substitute?

AMENDMENT NO. 1458

Mr. CHAFEE. Mr. President, I send to the desk an amendment to the substitute on behalf of Senator STEVENS.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. STEVENS, for himself and Mr. MURKOWSKI, proposes an amendment numbered 1458:

At the appropriate place, insert the following new title:

TITLE —IMPLEMENTATION OF MARITIME BOUNDARY AGREEMENT

AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 1. (a) PURPOSES.—Section 2(b)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801(b)(1)) is amended by inserting ", and fishery resources in the special areas" immediately before the semicolon at the end.

(b) DEFINITIONS.—Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) by redesignating paragraphs (24) through (32) as paragraphs (25) through (33), respectively; and

(2) by inserting immediately after paragraph (23) the following new paragraph:

"(24) The term 'special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the United States-Soviet maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

(c) UNITED STATES MANAGEMENT AUTHORITY.—(1) Section 101(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(a)) is amended by inserting "and special areas" immediately before the period at the end.

(2) Section 101(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1811(b)) is amended by inserting immediately after paragraph (2) the following new paragraph:

"(3) All fishery resources in the special areas.".

(d) FOREIGN FISHING.—Section 201 of the Magnuson Fishery Conservation and Management (16 U.S.C. 1821) is amended—

(1) in subsection (a)—

(A) by inserting "within the special areas," immediately before "or for anadromous species"; and

(B) by striking "beyond the exclusive economic zone" and inserting in lieu thereof "beyond such zone or areas";

(2) in subsection (e)(1)(E)(IV), by inserting "or special areas" immediately after "exclusive economic zone";

(3) in subsection (i)—

(A) by inserting "or special areas" immediately before the period at the end of paragraph (1)(A);

(B) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(A); and

(C) by inserting "or special areas" immediately after "exclusive economic zone" in paragraph (2)(B); and

(4) in subsection (j)—

(A) by inserting ", special areas," immediately after "exclusive economic zone"; and

(B) by inserting ", areas," immediately after "such zone".

(e) INTERNATIONAL FISHERY AGREEMENTS.—Section 202 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1822) is amended—

(1) in subsection (b)—

(A) by inserting "or special areas" immediately after "February 28, 1977)"; and

(B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas";

(2) in subsection (c)—

(A) by inserting "or special areas" immediately after "February 28, 1977)"; and

(B) by striking "such zone or area" and inserting in lieu thereof "such zone or areas"; and

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

"(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with the Union of Soviet Socialist Republics of a duration of no more than 3 years, pursuant to which—

"(A) the Union of Soviet Socialist Republics will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

"(B) the United States will give fishing vessels of the Union of Soviet Socialist Republics the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

"(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

"(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

"(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

"(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).".

(f) PERMITS FOR FOREIGN FISHING.—Section 204(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(a)) is amended—

(1) by inserting "within the special areas," immediately before "or for anadromous species"; and

(2) by inserting "or areas" immediately after "such zone".

(g) CONTENTS OF FISHERY MANAGEMENT PLANS.—Section 303(b)(1)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)(1)(A)) is amended—

(1) by inserting "or special areas," immediately after "exclusive economic zone"; and

(2) by inserting "or areas" immediately after "such zone".

(h) PROHIBITED ACTS.—Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) in paragraph (1)(K), by inserting "or special areas" immediately after "exclusive economic zone";

(2) in paragraph (2)(B)—

(A) by inserting "within the special areas," immediately after "exclusive economic zone";

(B) by inserting "or areas" immediately after "such zone";

(3) in paragraph (3), by inserting "or special areas" immediately after "exclusive economic zone"; and

(4) in paragraph (4), by inserting "or special areas" immediately after "exclusive economic zone".

(i) ENFORCEMENT.—Section 311(b)(2) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(b)(2)) is amended by inserting "and special areas" immediately after "exclusive economic zone".

AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT OF 1982

SEC. 2. (a) DEFINITIONS.—(1) Section 2(c) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773(c)) is amended to read as follows:

"(c) 'Exclusive economic zone' means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.".

(2) Section 2 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773) is amended by adding at the end the following new subsection:

"(h) 'Special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the United States-Soviet maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

(b) UNLAWFUL ACTS.—Section 7(b) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773e(b)) is amended by striking "fishery conservation zone" and inserting in lieu thereof "exclusive economic zone and special areas".

AMENDMENTS TO FUR SEAL ACT OF 1966

SEC. 3. Section 101 of the Fur Seal Act of 1966 (16 U.S.C. 1151) is amended—

(1) by redesignating subsections (f) through (m) as subsections (g) through (n), respectively; and

(2) by inserting immediately after subsection (e) the following new subsection:

"(f) 'Jurisdiction of the United States' includes jurisdiction over the special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(24)).".

AMENDMENTS TO MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 4. Section 3(14) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(14)) is amended to read as follows:

"(14) The term 'waters under the jurisdiction of the United States' means—

"(A) the territorial sea of the United States;

"(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

"(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the United States-Soviet Maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

RELATIONSHIP TO ENDANGERED SPECIES ACT OF 1973

SEC. 5. The special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(24)) shall be considered places that are subject to the jurisdiction of the United States for the purposes of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

AMENDMENTS TO PACIFIC SALMON TREATY ACT OF 1985

SEC. 6. (a) DEFINITIONS.—Section 2 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631) is amended—

(1) by redesignating subsections (h) through (j) as subsections (i) through (k), respectively; and

(2) by inserting immediately after subsection (g) the following new subsection:

"(h) 'Special areas' means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the United States-Soviet maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of the Soviet Union is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.".

(b) RULEMAKING.—Section 7(a) of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3636(a)) is amended by inserting "and special areas" immediately after "Exclusive Economic Zone".

NATIONAL SEA GRANT COLLEGE PROGRAM

SEC. 7. (a) DEFINITIONS.—Section 203(6) of the National Sea Grant College Program Act (33 U.S.C. 1122(6)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by redesignating subparagraph (F) as subparagraph (G); and

(3) by inserting immediately after subparagraph (E) the following new subparagraph:

"(F) the special areas defined in section 3(24) of the Magnuson Fishery Conservation and Management Act (18 U.S.C. 1802(24)); and".

(b) INTERNATIONAL PROGRAM.—Section 3(a)(6) of the Sea Grant Program Improvement Act of 1976 (33 U.S.C. 1124a(a)(6)) is amended by inserting "and special areas" immediately after "exclusive economic zone".

EFFECTIVE DATES

SEC. 8. (a) IN GENERAL.—The amendment made by section 1(e)(3) takes effect on the date of enactment of this Act, and the amendments made by the other provisions of this title, except as provided in subsection (b), shall be effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(b) AUTHORITY TO PRESCRIBE REGULATIONS.—The authority to prescribe regulations to implement the amendments made by this title shall be effective on the date of enactment of this Act, but no such regulation may be effective until the date on which the Agreement described in subsection (a) enters into force for the United States.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1458) was ageed to.

The PRESIDING OFFICER. Are there further amendments to the substitute? If not, the question is on agreeing to the amendment.

The amendment (No. 1457), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. GRAMM. Mr. President, I rise in support of the provisions in H.R. 3866 which seek to expedite approval of the National Oceanic and Atmospheric Aministration's recommendation that the Flower Garden Banks Coral Reef, located off the Texas and Louisiana coasts, be designated as a National Marine Sanctuary. This will be the first national marine sanctuary in the Gulf of Mexico, and the designation will help protect and manage the ecological, recreational, research, and esthetic resources of this area.

The Flower Garden Banks consists of two separate areas of submerged land totaling 41.7 square nautical miles. This land includes the reefs in the northwest corner of the Gulf of Mexico. They comprise the northermost living coral reefs on the U.S. continental shelf. Isolated from other reef systems by over 300 nautical miles, the Flower Garden Banks offer a combination of aesthetic appeal, recreational uses, and research opportunities matched in few other ocean areas.

The plan for managing the proposed sanctuary contains guidelines to ensure that all management actions undertaken in the first 5 years are coordinated to meet sanctuary objectives. Heavy anchoring by large vessels has damaged the banks. The new sanctuary status will prohibit heavy anchoring of most vessels in the designated area and is supported by the environmental community, the regional governments, and coastal business interests.

This sanctuary designation of the Flower Garden Banks has been made within the agency's National Marine Sanctuary Program, created in 1972. Currently, there are eight other designated areas located off the coasts of Florida, Georgia, North Carolina, California, and American Samoa.

I encourage my colleagues to approve this designation and further ensure the environmental health and safety of this precious natural resource.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H. R. 3866), as amended, was passed.

Mr. FORD. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMERICAN TECHNOLOGY PREEMINENCE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 232, S. 1034, a bill to enhance the position of U.S. industry.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1034) to enhance the position of U.S. industry through the application of the results of Federal research and development, 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 insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Technology Preeminence Act of 1991".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "advanced manufacturing technology" means numerically-controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, concurrent engineering processes, and other technology for improving manufacturing and industrial processes;

(2) the term "advanced materials" means a field of research including the study of composites, ceramics, metals, polymers, superconducting materials, and materials production technologies, including coated systems, that provide the potential for significant advantages over existing materials;

(3) the term "high-resolution information systems" means equipment and techniques required to create, transmit, receive, display, process, record, store, recover, and play back high resolution images and accompanying sound;

(4) the term "Institute" means the National Institute of Standards and Technology;

(5) the term "Secretary" means the Secretary of Commerce; and

(6) the term "Under Secretary" means the Under Secretary of Commerce for Technology.

TITLE I—DEPARTMENT OF COMMERCE RESEARCH AND TECHNOLOGY

SEC. 101. SHORT TITLE.

This title may be cited as the "Technology Administration Authorization Act of 1991".

SEC. 102. STATEMENT OF POLICY.

Congress finds that in order to help United States industries to speed the development of new products and processes so as to maintain the economic competitiveness of the Nation, it is necessary to strengthen the programs and activities of the Department of Commerce's Technology Administration and National Institute of Standards and Technology.

SEC. 103. TECHNOLOGY ADMINISTRATION.

(a) FISCAL YEAR 1992.—(1) There are authorized to be appropriated to the Secretary, to carry out the activities of the Under Secretary and the Assistant Secretary for Technology Policy, $9,700,000 for fiscal year 1992, which shall be available for the following line items:

(A) Office of the Under Secretary, $2,000,000.

(B) Technology Policy, $3,700,000.

(C) Japanese Technical Literature, $1,500,000.

(D) Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation, $1,000,000.

(E) National Technical Information Service, $1,500,000 to carry out the modernization plan described in section 212(f)(3)(D) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(f)(3)(D)).

(2) Funds may not be transferred among the line items listed in paragraph (1) (C) and (D) and may not be used except for the purpose stated in each such line item.

(b) FISCAL YEAR 1993.—(1) There are authorized to be appropriated to the Secretary, to carry out the activities of the Under Secretary and the Assistant Secretary for Technology Policy, $10,000,000 for fiscal year 1993, which shall be available for the following line items:

(A) Office of the Under Secretary, $2,000,000.

(B) Technology Policy, $4,000,000.

(C) Japanese Technical Literature, $1,500,000.

(D) Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation, $1,000,000.

(E) National Technical Information Service, $1,500,000 to carry out the modernization plan described in section 212(f)(3)(D) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(f)(3)(D)).

(2) Funds may not be transferred among the line items listed in paragraph (1) (C) and (D) and may not be used except for the purpose stated in each such line item.

(c) OPERATING COSTS.—Operating costs for the National Technical Information Service associated with the acquisition, processing, storage, bibliographic control, and archiving of information and documents shall be recovered primarily through the collection of fees.

(d) REPORT AND CERTIFICATION TO CONGRESS.—By September 30, 1992, the Secretary shall submit to Congress a report which—

(1) describes the Department of Commerce's response to the Inspector General's Report No. ATD-024-0-001;

(2) includes a revised detailed modernization plan for the National Technical Information Service;

(3) contains a business plan which includes detailed profit and loss analysis for groups of products and services and for major market segments; and

(4) certifies that the National Technical Information Service has—

(A) employed a chief financial officer who is a certified public accountant or equivalent; and

(B) begun taking reasonable steps toward strengthening its accounting system in response to the Inspector General's report described in paragraph (1).

SEC. 104. THE INSTITUTE.

(a) FISCAL YEAR 1992.—(1) There are authorized to be appropriated to the Secretary, to carry out the intramural scientific and technical research and services activities of the Institute, $211,000,000 for fiscal year 1992, which shall be available for the following line items:

(A) Electronics and Electrical Engineering, $34,000,000.

(B) Manufacturing Engineering, $13,000,000.

(C) Chemical Science and Technology, $21,000,000.

(D) Physics, $27,000,000.

(E) Materials Science and Engineering, $29,000,000.

(F) Building and Fire Research, $11,000,000.

(G) Computer Systems, $15,500,000.

(H) Applied Mathematics and Scientific Computing, $6,500,000.

(I) Technology Assistance, $16,000,000.

(J) Research Support Activities, $38,000,000.

(2)(A) Of the total of the amounts authorized under paragraph (1), $2,000,000 are authorized only for steel technology.

(B) Of the amount authorized under paragraph (1)(I)—

(i) $500,000 are authorized only for the evaluation of nonenergy-related inventions and related technology extension activities;

(ii) $250,000 are authorized only for Institute participation in the pilot program established under subsection (d); and

(iii) $6,200,000 are authorized for the Institute's management of the extramural funding programs authorized under section 105.

(C) Of the amount authorized under paragraph (1)(J) of this subsection, $7,223,000 are authorized only for the technical competence fund.

(b) FISCAL YEAR 1993.—(1) There are authorized to be appropriated to the Secretary, to carry out the intramural scientific and technical research and services activities of the Institute, $241,495,000 for fiscal year 1993, which shall be available for the following line items:

(A) Electronics and Electrical Engineering, $36,647,000.

(B) Manufacturing Engineering, $18,064,000.

(C) Chemical Science and Technology, $21,585,000.

(D) Physics, $27,302,000.

(E) Materials Science and Engineering, $32,978,000.

(F) Building and Fire Research, $10,972,000.

(G) Computer Systems, $15,991,000.

(H) Applied Mathematics and Scientific Computing, $6,284,000.

(I) Technology Assistance, $20,413,000.

(J) Research Support Activities, $33,532,000.

(K) Additional Initiatives, $17,727,000.

(2)(A) Of the total of the amounts authorized under paragraph (1), $2,000,000 are authorized only for steel technology.

(B) Of the amount authorized under paragraph (1)(I)—

(i) $500,000 are authorized only for the evaluation of nonenergy-related inventions and related technology extension activities;

(ii) $250,000 are authorized only for Institute participation in the pilot program established under subsection (e); and

(iii) $10,000,000 are authorized for the Institute's management of the extramural funding programs authorized under section 105.

(C) Of the amount authorized under paragraph (1)(J) of this subsection, $7,223,000 are authorized only for the technical competence fund.

(3) In addition to the amounts authorized under paragraph (1), there are authorized to be appropriated to the Secretary for fiscal year 1993 such sums as may be necessary for the renovation and upgrading of the Institute's facilities.

(c) TRANSFERS.—(1) Funds may be transferred among the line items listed in subsections (a)(1) and (b)(1), so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such subsection and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(2) The Secretary may propose transfers to or from any line item listed in subsections (a)(1) and (b)(1) exceeding 10 percent of the amount authorized for such line item, but such proposed transfer may not be made unless—

(A) a full and complete explanation of any such proposed transfer and the reason therefor are transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing Committees of the House of Representatives and the Senate, and

(B) 30 calendar days have passed following the transmission of such written explanation.

(d) RELATION TO OTHER AUTHORIZATIONS.—Except for authorizations provided in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1448), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), and the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (15 U.S.C. 5101 et seq.), this Act contains the complete authorizations of appropriations for the Institute for fiscal years 1992 and 1993.

(e) PILOT PROGRAM.—Pursuant to the authorizations contained in subsections (a)(1)(I) and (b)(1)(I), the Secretary is authorized to pay the Federal share of the cost of establishing and carrying out a standards assistance pilot program under section 112 of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 (15 U.S.C. 272 note) for the purpose of aiding nations that have requested assistance from the United States in developing their standards. As part of that program, the Secretary is authorized to work with appropriate United States and foreign private and public organizations. The Secretary is authorized to expend resources which match the private sector contribution to the program.

(f) CONSTRUCTION OF FACILITIES.—Section 14 of the Act of March 3, 1901 (15 U.S.C. 278d), is amended by striking "herein:" and all that follows, and inserting in lieu thereof "herein.".

(g) FIRE AND BUILDING PROGRAMS.—The fire research and building technology programs of the Institute may be combined for administrative purposes only, and separate budget accounts for fire research and building technology shall be maintained. No later than December 31, 1991, the Secretary, acting through the Director of the Institute, shall report to Congress on the results of the combination, on efforts to preserve the integrity of the fire research and building technology programs, on the long-range basic and applied research plans of the two programs, on procedures for receiving advice on fire and earthquake research priorities from constituencies concerned with public safety, and on the relation between the combined program at the Institute and the United States Fire Administration.

(h) PERSONNEL.—Notwithstanding any other provision of law, the personnel management system for the Institute, established as a demonstration project under section 10 of the National Bureau of Standards Authorization Act for Fiscal Year 1987 (15 U.S.C. 275 note), shall become the permanent personnel management system for the Institute. The Director of the Institute shall carry out all responsibilities to execute and manage the personnel management system.

(i) EDUCATIONAL PROGRAMS.—(1) Section 18 of the Act of March 3, 1901 (15 U.S.C. 278g–1), is amended by striking the period at the end of the first sentence and inserting in lieu thereof ", and to United States citizens for research and technical activities on Institute programs.".

(2) Section 17 of the Act of March 3, 1901 (15 U.S.C. 278g), is amended by adding at the end the following new subsection:

"(d) For any scientific and engineering disciplines for which there is a shortage of suitably qualified and available United States citizens and nationals, the Secretary is authorized to recruit and employ in scientific and engineering fields at the Institute foreign nationals who have been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act and who intend to become United States citizens. Employment of a person under this subsection shall not be subject to the provisions of title 5, United States Code, governing employment in the competitive service, or to any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them.".

SEC. 105. EXTRAMURAL PROGRAMS OF THE INSTITUTE.

(a) FISCAL YEAR 1992.—In addition to any sums otherwise authorized under this Act, there are authorized to be appropriated to the Secretary, to carry out the extramural industrial technology services programs of the Institute created under sections 25, 26, and 28 of the Act of March 3, 1901 (15 U.S.C. 278k, 278l, and 278n), $137,500,000 for fiscal year 1992, which shall be available for the following line items:

(1) Regional Centers for the Transfer of Manufacturing Technology, $25,000,000.

(2) State Technology Extension Program, $2,500,000.

(3) Advanced Technology Program, $110,000,000.

(b) FISCAL YEAR 1993.—In addition to any sums otherwise authorized under this Act, there are authorized to be appropriated to the Secretary, to carry out the extramural industrial technology services programs of the Institute created under sections 25, 26, and 28 of the Act of March 3, 1901 (15 U.S.C. 278k, 278l, and 278n), $185,000,000 for fiscal year 1993, which shall be available for the following line item:

(1) Regional Centers for the Transfer of Manufacturing Technology and Satellite Manufacturing Centers, $35,000,000.

(2) State Technology Extension Program, $10,000,000.

(3) Advanced Technology Program, $140,000,000.

(c) LIMITATION.—No funds are authorized under this section for any project under the extramural programs of the Institute which have not been competitively reviewed through merit review processes.

(d) AMENDMENTS TO EXTENSION ACTIVITIES.—(1) Section 25(c)(5) of the Act of March 3, 1901 (15 U.S.C. 278k(c)(5)), is amended by inserting immediately before the period at the end the following: ", except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director".

(2) Section 25(d) of the Act of March 3, 1901 (15 U.S.C. 278k(d)), is amended to read as follows:

"(d) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section.".

(3) Section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 278l note) is amended by striking paragraph (5).

(e) ADVISORY COMMITTEE.—Section 5142(f) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4632(f)) is amended by striking "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993".

SEC. 106. SALARY ADJUSTMENTS.

In addition to any sums otherwise authorized by this Act, there are authorized to be appropriated to the Secretary for fiscal years 1992 and 1993 such additional sums as may be necessary to make any adjustments in salary, pay, retirement, and other employee benefits which may be provided for by law.

SEC. 107. AVAILABILITY OF APPROPRIATIONS.

Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

SEC. 108. REPORT ON FACILITIES NEEDS.

By March 1, 1992, the Director of the Institute shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on what renovations and upgrades of Institute facilities are necessary over the next decade. The report shall include a ranking of facilities needs in order of priority, an estimate of costs, and the Director's plan for meeting these needs.

SEC. 109. BUY-AMERICAN PROVISIONS.

(a) RESTRICTIONS ON CONTRACT AWARDS.—No contract or subcontract made with funds authorized under this Act may be awarded for the procurement of an article, material, or supply produced or manufactured in a foreign country whose government unfairly maintains in government procurement a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harms to United States businesses, as identified by the President pursuant to subsection (g)(1)(A) of section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)). Any such determination shall be made in accordance with such section 305.

(b) PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—If it has been finally determined by a court or a Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or an inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract from the Department of Commerce, pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(c) BUY-AMERICAN REQUIREMENT.—(1) The Secretary is authorized to award to a domestic firm a contract for the purchase of goods that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(A) the final product of the domestic firm will be completely assembled in the United States;

(B) when completely assembled, more than 50 percent of the final product of the domestic firm will be domestically produced; and

(C) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

(2) This subsection shall not apply to the extent that—

(A) in the opinion of the Secretary, after taking into consideration international obligations and trade relations, such applicability would not be in the public interest;

(B) in the opinion of the Secretary, after consultation with the Secretary of Defense, compelling national security considerations require otherwise; or

(C) the President determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(3) This action shall apply only to contracts made for which—

(A) amounts are authorized by this Act to be made available; and

(B) solicitations for bids are issued after the date of enactment of this Act.

(4) The Secretary, before January 1, 1993, shall report to the Congress on contracts covered under this subsection—

(A) entered into with foreign firms pursuant to a determination made under paragraph (2); and

(B) awarded to domestic firms pursuant to paragraph (1), in fiscal years 1991 and 1992.

(5) For purposes of this subsection—

(A) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(B) the term "foreign firm" means a business entity not described in subparagraph (A).

TITLE II—ADVANCED TECHNOLOGY PROGRAM AMENDMENTS

SEC. 201. EMERGING TECHNOLOGIES RESEARCH AND DEVELOPMENT.

(a) SHORT TITLE.—This title may be cited as the "Emerging Technologies and Advanced Technology Program Amendments Act of 1991".

(b) FINDINGS AND PURPOSES.—(1) The Congress finds that—

(A) technological innovation and its profitable inclusion in commercial products are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

(B) maintaining viable United States-based high technology industries is vital to both the national security and the economic well-being of the United States;

(C) the Department of Commerce has reported that the United States is losing or losing badly, relatively to Japan and Europe, in many important emerging technologies and risks losing much of the $350 billion United States market and $1 billion world market expected to develop by the year 2000 for products based on emerging technologies;

(D) it is in the national interest for the Federal Government to encourage and, in selected cases, provide limited financial assistance to industry-led private sector efforts to increase research and development in economically critical areas of technology;

(E) joint ventures are a particularly effective and appropriate way to pool resources to conduct research that no one company is likely to undertake but which will create new generic technologies that will benefit an entire industry and the welfare of the Nation;

(F) it is vital that industry within the United States attains a leadership role and capability in development, design, and manufacturing in fields such as high-resolution information systems, advanced manufacturing, and advanced materials; and

(G) the Advanced Technology Program, established under section 28 of the Act of March 3, 1901 (15 U.S.C. 278n), is the appropriate vehicle for the United States Government to provide limited assistance to joint development within the United States of new high technology capabilities in fields such as high-resolution information systems, advanced manufacturing technology, and advanced materials, and can help encourage United States industry to work together on problems of mutual concern.

(2) The purposes of this section are—

(A) to strengthen the Advanced Technology Program created under section 28 of the Act of March 3, 1901 (15 U.S.C. 278n), and to provide improved guidelines for the allocation of Advanced Technology Program funds appropriated under the authorizations contained in section 105 of this Act;

(B) to promote and assist in the development of advanced technologies and the generic application of such technologies to civilian products, processes, and services;

(C) to improve the competitive position of United States industry by supporting industry-led research and development projects in areas of emerging technology which have substantial potential to advance the economic well-being and national security of the United States, such as high-resolution information systems, advanced manufacturing technology, and advanced materials; and

(D) to support projects that range from idea exploration to prototype development and address long-term, high-risk areas of technological research, development, and application that are not otherwise being adequately developed by the private sector, but are likely to yield important benefits to the Nation.

(c) ADVANCED TECHNOLOGY PROGRAM.—(1) Section 28(a) of the Act of March 3, 1901 (15 U.S.C. 278n(a)), is amended by adding at the end the following new sentence: "In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683).".

(2) Section 28(b)(1) of the Act of March 3, 1901 (15 U.S.C. 278n(b)(1)), is amended by inserting "industry-led" immediately after "aid".

(3) Section 28(b)(1)(B) of the Act of March 3, 1901 (15 U.S.C. 278n(b)(1)(B)), is amended by inserting "by means of grants, cooperative agreements, or contracts" immediately after "such joint ventures".

(4) Section 28(b)(2) of the Act of March 3, 1901 (15 U.S.C. 278n(b)(2)), is amended to read as follows:

"(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;".

(5) Section 28(d)(2) of the Act of March 3, 1901 (15 U.S.C. 278n(d)(2)), is amended to read as follows:

"(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.".

(6) Section 28(d) of the Act of March 3, 1901 (15 U.S.C. 278n(d)(7)), is amended—

(A) by striking paragraph (7);

(B) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively; and

(C) by adding at the end the following new paragraphs:

"(9) A company shall be eligible to receive financial assistance under this section only if—

"(A) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

"(B) either—

"(i) the company is a United States-owned company; or

"(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

"(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

"(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

"(B) For purposes of this paragraph, the term 'intellectual property' means an invention patentable under title 35, United States Code, or any patent on such an invention.

"(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.".

(7) Section 28(e) of the Act of March 3, 1901 (15 U.S.C. 278n(e)), is amended to read as follows:

"(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so.".

(8) Section 28 of the Act of March 3, 1901 (15 U.S.C. 278n), is amended by adding at the end the following new subsections:

"(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

"(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

"(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

"(i) In addition to such sums as may be authorized and appropriated to the Secretary and

Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

"(j) As used in this section—

"(1) the term 'joint venture' means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

"(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

"(B) the development or testing of basic engineering techniques;

"(C) the extension of investigative finding or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

"(D) the collection, exchange, and analysis of research information;

"(E) the production of any product, process, or service; or

"(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture;

"(2) the term 'United States-owned company' means a company that has majority ownership or control by individuals who are citizens of the United States; and

"(3) the term 'foreign-owned company' means a company other than a United States-owned company.".

(d) EFFECTIVE DATE.—The amendments in subsection (c) of this section shall take effect immediately upon enactment; however, those amendments shall not apply to applications submitted in response to any Federal Register Invitation for Proposals dated prior to the date of enactment of this Act, or awards or other assistance granted pursuant to that notice.

(e) MANAGEMENT COSTS.—Section 2 of the Act of March 3, 1901 (15 U.S.C. 272), is amended by adding at the end the following new subsection:

"(d) In carrying out the extramural funding programs of the Institute, including the programs established under sections 25, 26, and 28 of this Act, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.".

(f) COMPREHENSIVE REPORT.—The Secretary shall, not later than 4 years after the date of enactment of this Act, submit to each House of Congress and the President a comprehensive report on the results of the Advanced Technology Program established under section 28 of the Act of March 3, 1901 (15 U.S.C. 278n), including activities in the areas of high-resolution information systems, advanced manufacturing technology, and advanced materials.

(g) COMMERCE DEPARTMENT REPORTS ON SEMATECH.—Section 273(c)(4) of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (15 U.S.C. 4603(c)(4)) and section 5422(a) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4603(a)) are each amended by striking "Economic Affairs" and inserting in lieu thereof "Technology".

TITLE III—AMENDMENTS TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

SEC. 301. FEDERAL LABORATORY CONSORTIUM.

Section 11(e)(7)(B)(ii) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(7)(B)(ii)) is amended by striking "1987, 1988, 1989, 1990, or 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, or 1996".

SEC. 302. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

(a) PROVISION OF INTELLECTUAL PROPERTY.—Section 12(d)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(1)) is amended by inserting "intellectual property," immediately after "equipment," both places it appears.

(b) REPORT.—Within 6 months after the date of enactment of this Act, the Secretary shall report to Congress on the advisability of authorizing a new form of cooperative research and development agreement which would permit Federal contributions of funds.

SEC. 303. DEFINITION OF FEDERAL AGENCY.

Section 4(8) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(8)) is amended by inserting ", as well as any agency of the legislative branch of the Federal Government" immediately after "of such title".

SEC. 304. QUALITY IMPROVEMENT.

Section 17(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a(f)) is amended by adding at the end the following: "The Director is authorized to use appropriated funds to carry out responsibilities under this Act.".

SEC. 305. UNDER SECRETARY.

Section 5(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3704(c)) is amended—

(1) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(2) by inserting immediately after paragraph (12) the following new paragraph:

"(13) serve as a focal point for discussions among United States companies, trade associations, and labor unions on topics of interest to industry and labor, including discussions regarding issues of manufacturing and emerging technologies;".

TITLE IV—STUDIES AND REPORTS

SEC. 401. HIGH-RESOLUTION INFORMATION SYSTEMS ADVISORY BOARD.

(a) ESTABLISHMENT AND PURPOSE.—The Director of the Office of Science and Technology Policy shall establish within that office a High-Resolution Information Systems Advisory Board (hereafter in this section referred to as the "Board") to monitor and, as appropriate, foster the development of United States-based high-resolution information system industries.

(b) FUNCTIONS.—The Board shall—

(1) collect and analyze information on the range of factors which will determine whether United States-based high-resolution information systems industries will develop and become competitive, including such factors as technology policies, specialized financial problems, international standards and foreign trade practices, Federal regulations and procurement policies, and licensing practices;

(2) identify areas where appropriate cooperation between the Federal Government and the private sector, including Government support for industry-led joint research and development ventures, would enhance United States industrial competitiveness in this area, and provide advice and guidance for such cooperative efforts;

(3) provide guidance on what Federal policies and practices, particularly in such areas as procurement and the transfer of federally-funded research, are necessary to help establish United States-based high-resolution information systems industries;

(4) provide advice on the coordination of Federal defense and civilian activities to maximize and assist with the transfer of technologies in the field of high-resolution information systems into commercial products; and

(5) generally develop recommendations for guiding Federal agency activities related to the development of United States-based high-resolution information systems industries.

(c) MEMBERSHIP AND PROCEDURES.—(1)(A) The Board shall be composed of 13 members, seven of whom shall constitute a quorum.

(B) The Director of the Office of Science and Technology Policy, the Secretary of Commerce, the Director of the Defense Advanced Research Projects Agency, and the Administrator of the National Aeronautics and Space Administration, or their designees, shall serve as members of the Board.

(C) The President, acting through the Director of the Office of Science and Technology Policy, within 90 days after the date of enactment of this Act, shall appoint as additional members of the Board—

(i) five members from the private electronics manufacturing sector, drawn from such sectors as semiconductors, display equipment, computers, consumer electronics, and telecommunications, with one member also representing labor;

(ii) three members from the private nonmanufacturing sector, including one representative from the transmission delivery systems sector and two representatives drawn from such areas as the software industry, the entertainment industry, and the investment community; and

(iii) one member from academia.

At least one member appointed under this paragraph shall be from small business.

(2) The Director of the Office of Science and Technology Policy or the Director's designee shall chair the Board.

(3) The chairman shall call the first meeting of the Board within 30 days after the appointment of members is completed.

(4) The Board may use such personnel detailed from Federal agencies as may be necessary to enable it to perform its functions.

(5) Members of the Board, other than full-time employees of the Federal Government, while attending meetings of the Board or otherwise performing duties of the Board while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) The Board shall submit to the President and Congress a report of its activities once every year after its establishment.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993.

SEC. 402. MAJOR SCIENCE AND TECHNOLOGY PROPOSALS.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 et seq.) is amended by adding at the end of title II the following new section:

"MAJOR SCIENCE AND TECHNOLOGY PROPOSALS

"SEC. 209. The Director shall identify and provide an annual report to Congress on each major multinational science and technology project, in which the United States is not a participant, which has a total estimated cost greater than $1,000,000,000.".

SEC. 403. BIENNIAL NATIONAL CRITICAL TECHNOLOGIES REPORT AMENDMENTS.

(a) EMERGING CIVILIAN TECHNOLOGIES.—Section 603(a) of the National Science and Technology Policy, Organization, and Priorities Act

of 1976 (42 U.S.C. 6683(a)) is amended by inserting ", but shall include the most economically important emerging civilian technologies during the 10-year period following such report, together with the estimated current and future size of domestic and international markets for products derived from those emerging civilian technologies" immediately after "may not exceed 30".

(b) PANEL DETERMINATION.—Section 603(b) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6883(b)) is amended by striking "national security and" inserting in lieu thereof "national security or".

(c) COMPARISON OF TECHNOLOGY BASES.—Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683) is amended by redesignating subsection (d) as subsection (e) and by inserting immediately after subsection (c) the following new subsection:

"(d) Each such report shall include—

"(1) an identification of the types of research and development needed to close any significant gaps or deficiencies in the technology base of the United States, as compared with the technology bases of major trading partners; and

"(2) a list of the technologies and markets targeted by major trading partners for development or capture.".

SEC. 404. RESEARCH, DEVELOPMENT, TECHNOLOGY UTILIZATION, AND GOVERNMENT PROCUREMENT POLICY.

(a) ESTABLISHMENT OF COMMISSION.—The Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, shall establish a Commission on Technology and Procurement (hereafter in this section referred to as the "Commission"), for the purposes of analyzing the effect of Federal Government procurement laws, procedures, and policies on the development of advanced technologies within the United States and making recommendations on how Federal policy could be changed to promote further the development of advanced technologies.

(b) ISSUES.—The Commission shall address the following issues:

(1) To what extent, if any, should Federal Government technology purchase strategies be used to give domestic suppliers a competitive advantage in new generations of existing technologies and in initial market penetration for new technologies?

(2) How can the Federal Government procurement laws, practices, and procedures be used as a strategic tool to foster the use of emerging technologies?

(3) Under what conditions can Federal Government purchases of advanced technology-based products be based on performance specifications rather than on product specifications? Should Federal Government procurement first look to the commercial markets for products that will meet performance specifications before purchasing a unique product that has to be developed?

(4) How can the Federal Government ensure that its suppliers adopt the principles embodied in the Malcolm Baldrige National Quality Award?

(5) Should Federal Government procurement practices include cooperative efforts between the supplier and the Federal entity to develop products so as to be more easily marketed on a commercial basis? Should a program for the exchange of technical personnel to foster innovation in product development be part of such practices?

(6) To what extent, if any, should Federal Government documents specify standards that are beneficial to domestic suppliers, aid the compatibility of advanced technologies, and speed the commercial acceptance of those technologies, and what would be the role of the Institute in such an effort?

(7) Should Federal Government procurement be linked to the Advanced Technology Program and to technology transfer activities so that specification development can incorporate the latest technical advances available?

(8) To what extent should worldwide, state of the art technology be required in Federal Government procurement?

(c) MEMBERSHIP AND PROCEDURES.—(1) The Commission shall be composed of 15 members, eight of whom shall constitute a quorum.

(2) The Secretary, the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Administrator of General Services, or their designees who serve in executive level positions, shall serve as members of the Commission.

(3) The Secretary, with the concurrence of the Administrator of the Office of Federal Procurement Policy, shall appoint as members of the Commission, from among individuals not employed by the Federal Government—

(A) four members who are eminent in advanced technology businesses representing manufacturing and services industries, including at least one member representing labor;

(B) three members who are eminent in the fields of technology and international economic development; and

(C) three members who are eminent in the fields of Federal Government procurement.

(4) The Secretary shall appoint a Commission chairman from among the members of the Commission. The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act.

(5) The Secretary and the Administrator of the Office of Federal Procurement Policy shall provide such staff as may be required by the Commission to carry out its responsibilities.

(6) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission or otherwise performing duties of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(d) REPORTS.—(1) The Commission shall, within 1 year after the date of enactment of this Act, submit to the Secretary, the Administrator of the Office of Federal Procurement Policy, the President, and Congress a report containing preliminary recommendations with respect to the issues addressed under subsection (b).

(2) The Commission shall, within 2 years after the date of enactment of this Act, submit to the Secretary and Congress a final report containing final recommendations with respect to the issues addressed under subsection (b).

(e) CONSULTATION.—The Commission shall consult, as appropriate, with the National Commission on Reducing Capital Costs for Emerging Technology.

(f) TERMINATION.—The Commission shall terminate 6 months after the submission of its final report under subsection (d)(2).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992, 1993, and 1994.

SEC. 405. REPORT ON INFORMATION COLLECTION AND DISSEMINATION.

(a) REPORT.—Within 270 days after the date of enactment of this Act, the Secretary shall report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on the feasibility of establishing and operating a Federal Online Information Product Catalog (FEDLINE) at the National Technical Information Service which would serve as a comprehensive inventory and authoritative register of information products and services disseminated by the Federal Government and assist agencies and the public in locating Federal Government information. Information protected from public disclosure shall not be included. In studying the concept, the Secretary, acting through the Under Secretary and the Director of the National Technical Information Service, shall consult with officials from appropriate Government agencies, including the Office of Management and Budget, the National Archives, the Government Printing Office, and the Institute, and with representatives of the public, for their views on the optimal composition and format of FEDLINE. Such report shall contain cost estimates and possible funding sources for establishing and operating FEDLINE and shall list any changes in law and regulation that would be required if FEDLINE were to be implemented.

(b) FUNDING.—The Director of the National Technical Information Service may retain and use all monies received, including receipts, revenues, and advanced payments and deposits, to fund obligations and expenses, including capital equipment and inventory, through the end of fiscal year 1993.

(c) ELECTRONIC FORMAT.—Section 212(e)(5) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(e)(5)) is amended by inserting ", including the production and dissemination of information products in electronic format" immediately after "engineering information".

SEC. 406. STUDY OF TESTING AND CERTIFICATION.

(a) CONTRACT WITH NATIONAL RESEARCH COUNCIL.—Within 90 days after the date of enactment of this Act and within available appropriations, the Secretary shall enter into a contract with the National Research Council for a thorough review of international product testing and certification issues. The National Research Council will be asked to address the following issues and make recommendations as appropriate:

(1) the impact on United States manufacturers, testing and certification laboratories, certification organizations, and other affected bodies of the European Community's plans for testing and certification of regulated and non-regulated products of non-European origin;

(2) ways for United States manufacturers to gain acceptance of their products in the European Community and in other foreign countries and regions;

(3) the feasibility and consequences of having mutual recognition agreements between testing and certification organizations in the United States and those of major trading partners on the accreditation of testing and certification laboratories and on quality control requirements;

(4) information coordination regarding product acceptance and conformity assessment mechanisms between the United States and foreign governments; and

(5) the appropriate Federal, State, and private roles in coordination and oversight of testing, certification, accreditation, and quality control to support national and international trade.

(b) MEMBERSHIP.—In selecting the members of the review panel, the National Research Council shall consult with and draw from, among others, laboratory accreditation laboratories and organizations, Federal and State government agencies involved in testing and certification, professional societies, trade associations, small business, and labor organizations.

(c) REPORT.—A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President,

and Congress within 18 months after the Secretary signs the contract with the National Research Council.

SEC. 407. REPORT ON A STRATEGY TO STIMULATE COMPETITIVE RESEARCH.

(a) IN GENERAL.—No later than 120 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report presenting a proposed strategy for improving the university research capabilities of those States which historically have received relatively little Federal research and development funding. The report shall particularly—

(1) analyze recent steps to use the National Science Foundation's Experimental Program to Stimulate Competitive Research as a model for similar programs in several other Federal departments and agencies which fund research and development; and

(2) examine the feasibility and advisability of using that Program as a model for Federal research and development agencies which do not currently have similar programs.

(b) ANALYSIS AND DISCUSSION.—The report shall include an analysis and discussion of—

(1) the geographic distribution of Federal research and development grants and contracts;

(2) current Federal efforts to stimulate competitive research; and

(3) the feasibility and advisability of new Federal programs to stimulate competitive research.

SEC. 408. INTERAGENCY COORDINATION.

The Secretary shall, within 180 days after the date of enactment of this Act, submit to the Committee on Commerce, Science, and Transportation of the Senate, and to the Committee on Science, Space, and Technology and the Committee on Energy and Commerce of the House of Representatives, a plan for coordination of Commerce Department efforts with other Federal agencies for activities related to high-resolution information systems, including research and development activities.

AMENDMENT NO. 1459

(Purpose: To make an amendment in the nature of a substitute)

Mr. FORD. Mr. President, on behalf of Senator HOLLINGS, 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 Kentucky [Mr. FORD], for Mr. HOLLINGS, proposes an amendment numbered 1459:

Mr. FORD. 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:

SECTION 1. SHORT TITLE

This Act may be cited as the "American Technology Preeminence Act of 1991".

SEC. 2. DEFINITIONS.

As used in the Act—

(1) the term "high-resolution information systems" means equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound;

(2) the term "advanced manufacturing technology" means numerically-controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and othe technology for improving manufacturing and industrial processes;

(3) the term "advanced materials" means a field of research including the study of composites, ceramics, metals, polymers, superconducting materials, materials produced through biotechnology, and materials production technologies, including coated systems, that provide the potential for significant advantages over existing materials;

(4) the term "Institute" means the National Institute of Standards and Technology'

(5) the term "Secretary" means the Secretary of Commerce; and

(6) the term "Under Secretary" means the Under Secretary of Commerce for Technology.

TITLE I—DEPARTMENT OF COMMERCE RESEARCH AND TECHNOLOGY

SEC. 101. SHORT TITLE.

This title may be cited as the "Technology Administration Authorization Act of 1991".

SEC. 102. STATEMENT OF POLICY.

Congress finds that in order to help United States industries to speed the development of new products and processes so as to maintain the economic competitiveness of the Nation, it is necessary to strengthen the programs and activities of the Department of Commerce's Technology Administration and National Institute of Standards and Technology.

SEC. 103. TECHNOLOGY ADMINISTRATION.

(a) FISCAL YEAR 1992—(1) There are authorized to be appropriated to the Secretary, to carry out the activities of the Under Secretary and the Assistant Secretary for Technology Policy, $10,000,000 for fiscal year 1992, which shall be available for the following line items:

(A) Office of the Under Secretary, $2,000,000.

(B) Technology Policy, $4,000.000.

(C) Japanese Technical Literature, $1,500,000.

(D) Clearinghouse on State and Local Initiatives on Productivity, Technology, and Innovation, $1,000,000.

(E) National Technical Information Service, $1,500,000 to carry out the modernization plan described in section 212(f)(3)(D) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(f)(3)(D)).

(2) Funds may be transferred among the line items listed in paragraoh (1), so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such paragraph and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(b) FISCAL YEAR 1993.—(1) There are authorized to be appropriated to the Secretary, to carry out the activities of the Under Secretary and the Assistant Secretary for Technology Policy, $10,000,000 for fiscal year 1993, which shall be available for the following line items:

(A) Office of the Under Secretary, $2,000,000.

(B) Technology Policy, $4,000,000.

(C) Japanese Technical Literature, $1,500,000.

(D) Clearinghouse on State and Local Initiatives on Productivity, Technology, and Innovation, $1,000,000.

(E) National Technical Information Service, $1,500,000 to carry out the modernization plan described in section 212(f)(3)(D) of the National Technical Informtion Act of 1988 (15 U.S.C. 3704b(f)(3)(D)).

(2) Funds may be transferred among the line items listed in paragraph (1), so long as the net funds transferred to or from any line item to not exceed 10 percent of the amount authorized for that line item in such paragraph and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(c) OPERATING COSTS.—Operating costs for the National Technical Information Service associated with the acquisition, processing, storage, bibliographic control, and archiving of information and documents shall be recovered primarily through the collection of fees.

(d) REPORT AND CERTIFICATION TO CONGRESS.—Within 90 days after the date of enactment of this Act, the Secretary shall submit to Congress a report which—

(1) describes the Department of Commerce's response to the Inspector General's Report No. ATD-024-0-001;

(2) includes a revised detailed modernization plan for the National Technical Information Service;

(3) contains a business plan for the National Technical Information Service which includes detailed profit and loss analysis for groups of products and services and for major market segments; and

(4) certifies that the National Technical Information Service has—

(A) employed a chief financial officer who is a certified public accountant or equivalently experienced accountant with experience in the dissemination of scientific and technical information; and

(B) begun taking reasonable steps toward strengthening its accounting system in response to the Inspector General's report described in paragraph (1).

(e) TECHNICAL AMENDMENT.—Section 5422(a) of the Omnibus Trade and competitiveness Act of 1988 (15 U.S.C. 4603a(a)) and section 273(c)(4) of the National Defense Authorization Act for Fiscal years 1988 and 1989 (15 U.S.C. 4603(c)(4)) are each amended by striking "Economic Affairs" and inserting in lieu thereof "Technology".

SEC. 104. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

(a) FISCAL YEAR 1992.—(1) There are authorized to be appropriated to the Secretary, to carry out the intramural scientific and technical research and services activities of the Institute, $210,000,000 for fiscal year 1992, which shall be available for the following line items:

(A) Electronics and Electrical Measurements, $33,700,000.

(B) Manufacturing Engineering, $13,500,000.

(C) Chemical Science and Technology, $22,000,000.

(D) Physics, $27,000,000.

(E) Materials Science and Engineering, $30,000,000.

(F) Building and Fire Research, $12,300,000.

(G) Computer Systems, $16,000,000.

(H) Applied Mathematics and Scientific Computing, $6,500,000.

(I) Technology Assistance, $11,000,000.

(J) Research Support Activities, $38,000,000.

(2)(A) Of the total of the amounts authorized under paragraph (1), $2,000,000 are authorized only for steel technology.

(B) Of the amount authorized under paragraph (1)(I)—

(i) $500,000 are authorized only for the evaluation of nonenergy-related inventions and related technology extension activities;

(ii) $250,000 are authorized only for Institute participation in the pilot program established under subsection (e); and

(iii) $2,700,000 are authorized only for the Institute's management of the extramural funding programs authorized under section 105.

(C) Of the total amount authorized under paragraph (1)(J), $7,565,000 are authorized only for the technical competence fund.

(b) FISCAL YEAR 1993.—(1) There are authorized to be appropriated to the Secretary, to carry out the intramural scientific and technical research and services activities of the Institute, $221,200,000 for fiscal year 1993, which shall be available for the following line items:

(A) Electronics and Electrical Measurements, $36,000,000.

(B) Manufacturing Engineering, $16,000,000.

(C) Chemical Science and Technology, $22,500,000.

(D) Physics, $28,700,000.

(E) Materials Science and Engineering, $39,400,000.

(F) Building and Fire Research, $12,000,000.

(G) Computer Systems $20,600,000.

(H) Applied Mathematics and Scientific Computing, $6,300,000.

(I) Technology Assistance, $10,800,000.

(J) Research Support Activities, $25,000,000.

(K) Pay Raise, $3,900,000.

(2)(A) Of the total of the amounts authorized under paragraph (1), $2,000,000 are authorized only for steel technology.

(B) Of the amount authorized under paragraph (1)(I)—

(i) $500,000 are authorized only for the evaluation of nonenergy-related inventions and related technology extension activities;

(ii) $250,000 are authorized only for Institute participation in the pilot program established under subsection (e); and

(iii) $5,000,000 are authorized only for the Institute's management of the extramural funding programs authorized under section 105.

(C) Of the total amount authorized under paragraph (1)(J), $7,223,000 are authorized only for the technical competence fund.

(3) In addition to the amounts authorized under paragraph (1), there are authorized to be appropriated to the Secretary for fiscal year 1993 $34,800,000 for the renovation and upgrading of the Institute's facilities.

(c) TRANSFERS.—(1) Funds may be transferred among the line items listed in subsection (a)(1) and among the line items listed in subsection (b)(1), so long as the net funds transferred to or from any line item do not exceed 10 percent of the amount authorized for that line item in such subsection and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives are notified in advance of any such transfer.

(2) The Secretary may propose transfers to or from any line item listed in subsection (a)(1) or subsection (b)(1) exceeding 10 percent of the amount authorized for such line item, but such proposed transfer may not be made unless—

(A) a full and complete explanation of any such proposed transfer and the reason therefor are transmitted in writing to the Speaker of the House of Representatives, the President of the Senate, and the appropriate authorizing Committees of the House of Representatives and the Senate, and

(B) 30 calendar days have passed following the transmission of such written explanation.

(d) RELATION TO OTHER AUTHORIZATIONS.—Except for authorizations provided in the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 102 Stat. 1448), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), and the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (15 U.S.C. 5101 et seq.), this Act contains the complete authorizations of appropriations for the Institute for fiscal years 1992 and 1993. This subsection shall not limit the authority of the Institute to accept funds appropriated to any other Federal agency or to perform work for others.

(e) PILOT PROGRAM.—Pursuant to the authorizations contained in subsections (a)(1)(I) and (b)(1)(I), the Secretary is authorized to pay the Federal share of the cost of establishing and carrying out a standards assistance pilot program under section 112 of the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 (15 U.S.C. 272 note). The purpose of the pilot program is to assist a country or countries that have requested assistance from the United States in the development of comprehensive industrial standards by providing the continuous presence of United States personnel on-site for a period of 2 or more years to provide such assistance and by providing, as necessary, additional technical support from within the Institue. Such funds shall be made available for such purpose only to the extent that matching funds are received by the National Institute of Standards and Technology from sources outside the Federal Government.

(f) CONSTRUCTION OF FACILITIES.—Section 14 of the National Institute of Standards and Technology Act (15 U.S.C. 278d) is amended by striking "herein" and all that follows, and inserting in lieu thereof "herein.".

(g) FIRE AND BUILDING PROGRAMS.—The fire research and building technology programs of the Institute may be combined for administrative purposes only, and separate budget accounts for fire research and building technology shall be maintained. No later than December 31, 1992, the Secretary, acting through the Director of the Institute, shall report to Congress on the results of the combination, on efforts to preserve the integrity of the fire research and building technology programs, on the long-range basic and applied research plans of the two programs, on procedures for receiving advice on fire and earthquake research priorities from constituencies concerned with public safety, and on the relation between the combined program at the Institute and the United States Fire Administration.

(h) EDUCATIONAL PROGRAMS.—(1) Section 18 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-1)) is amended by striking the period at the end of the first sentence and inserting in lieu thereof ", and to United States citizens for research and technical activities on Institute programs.".

(2) Section 17 of the National Institute of Standards and Technology Act (15 U.S.C. 278g) is amended by adding at the end the following new subsection:

"(d) For any scientific and engineering disciplines for which there is a shortage of suitably qualified and available United States citizens and nationals, the Secretary is authorized to recruit and employ in scientific and engineering fields at the Institute foreign nationals who have been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act and who intend to become United States citizens. Employment of a person under this pragraph shall not be subject to the provisions of title 5, United States Code, governing employment in the competitive service, or to any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them.".

(i) CORE PROGRAM FUNDING.—It is the sense of the Congress that the intramural scientific and technical research and services activities of the National Institute of Standards and Technology should share fully in any funding increases provided to the Institute.

SEC. 105. EXTRAMURAL PROGRAMS OF THE INSTITUTE.

(a) FISCAL YEAR 1992.—In addition to any sums otherwise authorized under this Act, there are authorized to be appropriated to the Secretary, to carry out the extramural industrial technology services programs of the Institute created under sections 25, 26, and 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278k, 2781, and 278n), $217,500,000 for fiscal year 1992, which shall be available for the following line items:

(1) Regional Centers for the Transfer of Manufacturing Technology, $25,000,000.

(2) State Technology Extension Program, $2,500,000.

(3) Advanced Technology Program, $100,000,000.

(b) FISCAL YEAR 1993.—In addition to any sums otherwise authorized under this Act, there are authorized to be appropriated to the Secretary, to carry out the extramural industrial technology services programs of the Institute created under sections 25, 26, and 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278k, 2781, and 278n), $127,500,000 for fiscal year 1993, which shall be available for the following line items:

(1) Regional Centers for the Transfer of Manufacturing Technology and Satellite Manufacturing Centers, $25,000,000.

(2) State Technology Extension Program, $2,500,000.

(3) Advanced Technology Program, $100,000,000.

(c) LIMITATION.—No funds are authorized under this section for any project under the extramural programs of the Institute which have not been competitively reviewed through the merit review processes required by the National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.).

(d) AMENDMENTS TO EXTENSION PROGRAM.—Section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 2781 note) is amended by striking paragraph (5).

(e) AMENDMENTS TO EXTENSION ACTIVITIES.—(1) Section 25(c)(6) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(c)(6)) is amended by inserting before the period at the end the following: "except for contracts for such specific technology extension or transfer services as may be specified by statute or by the Director".

(2) Section 25(d) of the National Institute of Standards and Technology Act (15 U.S.C. 278k(d)) is amended to read as follows:

"(d) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Centers program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support Centers. Any Center which is supported with funds which originally came from other Federal departments and agencies shall be selected and operated according to the provisions of this section.".

(f) ADVISORY COMMITTEE.—Section 5142(f) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4632(f)) is amended by strik-

ing "and 1990" and inserting in lieu thereof "1990, 1991, 1992, and 1993".

SEC. 106. SALARY ADJUSTMENTS.

In addition to any sums otherwise authorized by this Act, there are authorized to be appropriated to the Secretary for fiscal years 1992 and 1993 such additional sums as may be necessary to make any adjustments in salary, pay, retirement, and other employee benefits which may be provided for by law.

SEC. 107. METRIC AMENDMENT.

(a) The Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is amended—

(1) in sections 4(a)(2), (4), and (5), 4(b), and 5(c)(1), by striking "weight" and inserting in lieu thereof "weight or mass";

(2) in sections 4(a)(5) and 5(d), by striking "weights" and inserting in lieu thereof "weights or masses";

(3) in section 4(a)(2), by inserting ", using the most appropriate units of the SI metric system as the primary system for measuring quantity" after "panel of that label"; and

(4) in section 4(a)(3)(A)—

(A) by striking "containing" and inserting in lieu thereof "that also displays the avoirdupois system of measure, and that contains" in clause (i);

(B) by striking "that also displays the avoirdupois system of measure" after "random package" in clause (ii);

(C) by inserting "that also displays the avoirdupois system of measure" after "linear measure" in clause (iii); and

(D) by inserting "that also displays the avoirdupois system of measure" after "measure of area" in clause (iv).

(b) This section shall take effect 2 years after the date of enactment of this Act.

SEC. 108. TRANSFER OF FEDERAL SCIENTIFIC AND TECHNICAL INFORMATION.

(a) TRANSFER.—The head of each Federal executive department or agency shall transfer in a timely manner to the National Technical Information Service unclassified scientific, technical, and engineering information which results from federally funded research and development activities for dissemination to the private sector, academia, State and local governments, and Federal agencies. Only information which would otherwise be available for public dissemination shall be transferred under this subsection. Such information shall include technical reports and information, computer software, application assessments generated pursuant to section 11(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(c)), and information regarding training technology and other federally owned or originated technologies. The Secretary shall issue regulations within one year after the date of enactment of this Act outlining procedures for the ongoing transfer of such information to the National Technical Information Service.

(b) ANNUAL REPORT TO CONGRESS.—As part of the annual report required under section 212(f)(3) of the National Technical Information Act of 1988, the Secretary shall report to Congress on the status of efforts under this section to ensure access to Federal scientific and technical information by the public. Such report shall include—

(1) an evaluation of the comprehensiveness of transfers of information by each Federal executive department or agency under subsection (a);

(2) a description of the use of Federal scientific and technical information;

(3) plans for improving public access to Federal scientific and technical information; and

(4) recommendations for legislation necessary to improve public access to Federal scientific and technical information.

SEC. 109. AVAILABILITY OF APPROPRIATIONS.

Appropriations made under the authority provided in this Act shall remain available for obligation, for expenditure, or for obligation and expenditure for periods specified in the Acts making such appropriations.

SEC. 110. REPORT ON FACILITIES NEEDS.

By March 1, 1992, the Director of the Institute shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on what renovations and upgrades of Institute facilities are necessary over the next decade. The report shall include a ranking of facilities needs in order of priority, an estimate of costs, and the Director's plan for meeting these needs.

SEC. 111. BUY-AMERICAN PROVISIONS.

(a) RESTRICTIONS ON CONTRACT AWARDS.—No contract or subcontract made with funds authorized under this title may be awarded for the procurement of an article, material, or supply produced or manufactured in a foreign country whose government unfairly maintains in government procurement a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harms to United States businesses, and identified by the President pursuant to subsection (g)(1)(A) of section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)). Any such determination shall be made in accordance with such section 305.

(b) PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—If it has been finally determined by a court or a Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or an inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract from the Department of Commerce, pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(c) BUY-AMERICAN REQUIREMENT.—(1) The Secretary is authorized to award to a domestic firm a contract for the purchase of goods that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(A) the final product of the domestic firm will be completely assembled in the United States;

(B) when completely assembled, more than 50 percent of the final product of the domestic firm will be domestically produced; and

(C) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

(2) This subsection shall not apply to the extent to which—

(A) in the opinion of the Secretary, after taking into consideration international obligations and trade relations, such applicability would not be in the public interest;

(B) in the opinion of the Secretary, after consultation with the Secretary of Defense, compelling national security considerations require otherwise; or

(C) the President determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(3) This subsection shall apply only to contracts made for which—

(A) amounts are authorized by this title to be made available; and

(B) solicitations for bids are issued after the date of enactment of this Act.

(4) The Secretary, before January 1, 1993, shall report to the Congress on contracts covered under this subsection—

(A) entered into with foreign firms pursuant to a determination made under paragraph (2) of this subsection; and

(B) awarded to domestic firms pursuant to paragraph (1) of this subsection, in fiscal years 1991 and 1992.

(5) For purposes of this subsection—

(A) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(B) the term "foreign firm" means a business entity not described in subparagraph (A).

TITLE II—ADVANCED TECHNOLOGY PROGRAM AMENDMENTS

SEC. 201. EMERGING TECHNOLOGIES RESEARCH AND DEVELOPMENT.

(a) SHORT TITLE.—This title may be cited as the "Emerging Technologies and Advanced Technology Program Amendments Act of 1991".

(b) FINDINGS AND PURPOSES.—(1) The Congress finds that—

(A) technological innovation and its profitable inclusion in commercial products are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

(B) maintaining viable United States-based high technology industries is vital to both the national security and the economic well-being of the United States;

(C) the Department of Commerce has reported that the United States is losing or losing badly, relative to Japan and Europe, in many important emerging technologies and risks losing much of the $350 billion United States market and $1 trillion world market expected to develop by the year 2000 for products based on emerging technologies;

(D) it is in the national interest for the Federal Government to encourage and, in selected cases, provide limited financial assistance to industry-led private sector efforts to increase research and development in economically critical areas of technology;

(E) joint ventures are a particularly effective and appropriate way to pool resources to conduct research that no single company is likely to undertake but which will create new generic technologies that will benefit an entire industry and the welfare of the Nation;

(F) it is vital that industry within the United States attains a leadership role and capability in development, design, and manufacturing in fields such as high-resolution information systems, advanced manufacturing, and advanced materials; and

(G) the Advanced Technology Program, established under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), is the appropriate vehicle for the United States Government to provide limited assistance to joint development within the United States of new high technology capabilities in fields such as high-resolution information systems, advanced manufacturing technology, and advanced materials, and can help encourage United States industry to work together on problems of mutual concern.

(2) The purposes of this section are—

(A) to strengthen the Advanced Technology Program created under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), and to provide improved guidelines for the allocation of Advanced Technology Program funds appropriated under the authorizations contained in section 105 of this Act;

(B) to promote and assist in the development of advanced technologies and the generic application of such technologies to civilian products, processes, and services;

(C) to improve the competitive position of United States industry by supporting industry-led research and development projects in areas of emerging technology which have substantial potential to advance the economic well-being and national security of the United States, such as high-resolution information systems, advanced manufacturing technology, and advanced materials; and

(D) to support projects that range from idea exploration to prototype development and address long-term, high-risk areas of technological research, development, and application that are not otherwise being adequately developed by the private sector, but are likely to yield important benefits to the Nation.

(c) ADVANCED TECHNOLOGY PROGRAM.—(1) Section 28(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(a)), is amended by adding at the end the following new sentence: "In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683)."

(2) Section 28(b)(1) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(b)(1)), is amended by inserting "industry-led" immediately after "aid".

(3) Section 28(b)(1)(B) of the Act of March 3, 1901 (15 U.S.C. 278n(b)(1)(B)), is amended by inserting "by means of grants, cooperative agreements, or contracts" immediately after "such joint ventures".

(4) Section 28(b)(2) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(b)(2)), is amended to read as follows:

"(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;".

(5) Section 28(d)(2) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(d)(2)), is amended to read as follows:

"(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.".

(6) Section 28(d) of the Act of National Institute of Standards and Technology Act (15 U.S.C. 278n(d)(7)), is amended—

(A) by striking paragraph (7);

(B) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively; and

(C) by adding at the end the following new paragraphs:

"(9) A company shall be eligible to receive financial assistance under this section only if—

"(A) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

"(B) either—

"(i) the company is a United States-owned company; or

"(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded by any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

"(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

"(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

"(B) For purposes of this paragraph, the term 'intellectual property' means an invention patentable under title 35, United States Code, or any patent on such an invention.

"(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.".

(7) Section 28(e) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(e)), is amended to read as follows:

"(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so.".

(8) Section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), is amended by adding at the end the following new subsections:

"(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

"(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

"(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

"(i) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

"(j) As used in this section—

"(1) the term 'joint venture' means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

"(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

"(B) the development or testing of basic engineering techniques;

"(C) the extension of investigative finding or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

"(D) the collection, exchange, and analysis of research information;

"(E) the production of any product, process, or service; or

"(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and

"(2) the term 'United States-owned company' means a company that has majority ownership or control by individuals who are citizens of the United States."

(d) EFFECTIVE DATE.—The amendments in subsection (c) shall take effect immediately upon enactment; however, the amendments shall not apply to applications submitted before the date of enactment of this Act.

(e) MANAGEMENT COSTS.—Section 2 of the National Institute of standards and Tech-

nology Act (15 U.S.C. 272) is amended by adding at the end thereof the following new subsection:

"(d) In carrying out the extramural funding programs of the Institute, including the programs established under section 25, 26, and 28 of this Act, the Secretary may retain reasonable amounts of any funds appropriated pursuant to authorizations for these programs in order to pay for the Institute's management of these programs.".

(f) COMPREHENSIVE REPORT.The Secretary shall, not later than 4 years after the date of enactment of this Act, submit to each House of the Congress and the President a comprehensive report on the results of the Advanced Technology Program established under section 28 of the National Institute of Standards and Technology act (15 U.S.C. 278n), including any activities in the areas of high-resolution information systems, advanced manufacturing technology, and advanced materials.

TITLE III—AMENDMENTS TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

SEC. 301. FEDERAL LABORATORY CONSORTIUM.

(a) Section 11(e)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(2)) is amended by inserting "senior" after "Consortium and a".

(b) Section 11 (e)(6) of the Stevenson—Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(6)) is amended by adding at the end the following: "Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.".

(c) Section 11(e)(7)(B)(ii) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(7)(B)(ii)) is amended by striking "or 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, or 1996".

(d) Section 11(e)(8) of the Stevenson—Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)(8)) is repealed.

SEC. 302. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

(a) Section 12(d)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(1)) is amended by inserting "intellectual property," after "equipment," both places it appears.

(b) Within 6 months after the date of enactment of this Act, the Secretary shall report to the Congress on the advisability of authorizing a new form of cooperative research and development agreement which would permit Federal contributions of fund.

SEC. 303. RESEARCH EQUIPMENT.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710) is amended by adding at the end the following new subsection:

"(i) RESEARCH EQUIPMENT.—The Director of a laboratory, or the head of any Federal agency or department, may give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer with a gift under the section.".

SEC. 304. DEFINITION OF FEDERAL AGENCY.

Section 4(8) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(8)) is amended by inserting ", as well as any agency of the legislative branch of the Federal Government" after "of such title".

SEC. 305. QUALITY IMPROVEMENT.

Section 17(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711a(f)) is amended by adding at the end the following: "The Director is authorized to use appropriated funds to carry out responsibilities under this Act.".

SEC. 306. UNDER SECRETARY.

Section 5(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3704(c)) is amended—

(1) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(2) by inserting after paragraph (12) the following new paragraph:

"(13) serve as a focal point for discussions among United States companies on topics of interest to industry and labor, including discussions regarding manufacturing and discussions regarding emerging technologies;".

TITLE IV—NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY

SEC. 401. NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY.

(a) ESTABLISHMENT AND PURPOSE.—There is established a National Commission on Reducing Capital Costs for Emerging Technology (hereafter in this section referred to as the "Commission"), for the purpose of developing recommendations to increase the competitiveness of United States industry by encouraging investments in research, the development of new process and product technologies, and the production of those technologies.

(b) ISSUES.—The function of the Commission shall be to address the following issues:

(1) How has the overall cost of capital paid by United States companies differed during the past decade from that paid by companies in other industrial economies such as Germany, Japan, and the United Kingdom?

(2) To what extent has the cost of capital faced by technology companies differed from the overall cost of capital in each of these nations during the same period?

(3) To what extent do high capital costs in general inhibit investment in projects with long-term payoffs, such as the development and commercialization of new technology?

(4) To what extent does the structure of the financial services industry in the United States affect the flow of capital to advanced technology investment, and to what extent do current practices in the equity markets raise the cost of capital and inhibit the availability of capital to fund research and development, purchase advanced manufacturing equipment, and fund other investments necessary to commercialize advanced technology?

(5) In what ways do Government regulations influence the cost of capital in the United States?

(6) To what extent have national differences in capital costs facilitated the foreign acquisition of technology-based United States companies?

(7) What macroeconomic and other policies would promote greater investment in advanced manufacturing techniques, in research and development, and in other activities necessary to commercialize and produce now technologies?

(8) What specific policies should the Federal Government follow in order to reduce the cost of capital for United States companies to levels that are near parity with those faced by the Nation's principal trading partners?

(c) MEMBERSHIP.—(1) The Commission shall be composed of 9 members who are eminent in such fields as advanced technology, manufacturing, finance, and international economics and who are appointed as follows:

(A) 3 individuals appointed by the President, one of whom shall chair the Commission.

(B) 3 individuals appointed by the Speaker of the House of Representatives, 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives.

(C) 3 individuals appointed by the President pro tempore of the Senate, 2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate.

(2) Each member shall be appointed for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(d) PROCEDURES.—(1) The Chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act.

(2) Recommendations of the Commissions shall require the approval of three-quarters of the members of the Commission.

(3) The Commission may use such personnel detailed from Federal agencies as may be necessary to enable it to carry out its duties.

(4) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(e) REPORTS.—The Commission shall, within 1 year after the date of enactment of this Act, submit to the President and Congress a report containing legislative and other recommendations with respect to the issues addressed under subsection (b).

(f) CONSULTATION.—The Commission shall consult, as appropriate, with the Commission on Technology and Procurement established by section 505 of this Act.

(g) TERMINATION.—The Commission shall terminate 6 months after the submission of its report under subsection (e).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993.

TITLE V—STUDIES AND REPORTS

SEC. 501. HIGH-RESOLUTION INFORMATION SYSTEMS ADVISORY BOARD.

(a) ESTABLISHMENT AND PURPOSE.—The Directory of the Office of Science and Technology Policy shall establish within that office a High-Resolution Information Systems Advisory Board (hereafter in this section referred to the "Board") to monitor and, as appropriate, foster the development of United States-based high-resolution information systems industries.

(b) DEFINITION.—As used in this title, the term "high-resolution information systems" means the equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound.

(c) FUNCTIONS.—The board shall—

(1) collect and analyze information on the range of factors which will determine whether United States-based high-resolution information systems industries will develop and become competitive, including such factors as technology policies, specialized financial problems, international standards and foreign trade practices, Federal regulations and procurement policies, and licensing practices;

(2) identify areas where appropriate cooperation between the Federal Government

and the private sector, including Government support for industry-led joint research and development ventures, would enhance United States industrial competitiveness in this area, and provide advice and guidance for such cooperative efforts;

(3) provide guidance on what Federal policies and practices, particularly in such areas as procurement and the transfer of federally-funded research, are necessary to help establish United States-based high-resolution information systems industries;

(4) provide advice on the coordination of Federal defense and civilian activities to maximize and assist with the transfer of technologies in the field of high-resolution information systems into commercial products; and

(5) generally develop recommendations for guiding Federal agency activities related to the development of United States-based high-resolution information systems industries.

(d) MEMBERSHIP AND PROCEDURES.—(1)(A) The Board shall be composed of 13 members, 7 of whom shall constitute a quorum.

(B) The Director of the Office of Science and Technology Policy, the Secretary, the Directory of the Defense Advanced Research Projects Agency, and the Administrator of the National Aeronautics and Space Administration, or their designees, shall serve as members of the Board.

(C) The President, acting through the Director of the Office of Science and Technology Policy, within 90 days after the date of enactment of this Act, shall appoint as additional members of the Board—

(i) 5 members from the private electronics manufacturing sector, drawn from such sectors as semiconductors, display equipment, computers, consumer electronics, and telecommunications, with 1 member also representing labor;

(ii) 3 members from the private nonmanufacturing sector, including 1 representative from the transmission delivery the software industry, the entertainment industry, and the investment community; and

(iii) 1 member from academia.

At least 1 member appointed under this subparagraph shall be from small business.

(2) The Director of the Office of Science and Technology Policy or the Director's designee shall chair the Board.

(3) The chairman shall call the first meeting of the Board within 30 days after the appointment of members is completed.

(4) The Board may use such personnel detailed from Federal agencies as may be necessary to enable it to perform its functions.

(5) Members of the Board, other than full-time employees of the Federal Government, while attending meetings of the Board or otherwise performing duties of the Board while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) The Board shall submit a report of its activities once every year after its establishment to the President, the Committees on Science, Space, and Technology and on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(e) LIMITATION ON FUNCTIONS.—Nothing in this section or any other provision of this Act shall be construed—

(1) to authorize the Board to investigate or provide advice or guidance with respect to standards or other regulations or policies related to the transmission, delivery, or receipt of broadcast television or cable television signals subject to regulation by the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(2) to limit, modify, or affect in any manner the authorities, functions, or responsibilities of the Federal Communications Commission or the National Telecommunications and Information Administration.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993.

SEC. 502. MAJOR SCIENCE AND TECHNOLOGY PROPOSALS.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended by adding at the end of title II the following new section:

"MAJOR SCIENCE AND TECHNOLOGY PROPOSALS

"SEC. 209. The Director shall identify and provide an annual report to Congress on each major multinational science and technology project, in which the United States is not a participant, which has a total estimated cost greater than $1,000,000,000.".

SEC. 503. BIENNIAL NATIONAL CRITICAL TECHNOLOGIES REPORT AMENDMENTS.

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683) is amended—

(1) in subsection (a), by inserting ", but shall include the most economically important emerging civilian technologies during the 10-year period following such report, together with the estimated current and future size of domestic and international markets for products derived from these technologies" after "may not exceed 30";

(2) in subsection (b), by striking "national security and" and inserting in lieu thereof "national security or";

(3) by redesignating subsection (d) as subsection (e); and

(4) by inserting after subsection (c) the following new subsection:

"(d) Each such report shall include—

"(1) an identification of the types of research and development needed to close any significant gaps of deficiencies in the technology base of the United States, as compared with the technology bases of major trading partners; and

"(2) a list of the technologies and markets targeted by major trading partners for development or capture.".

SEC. 504. CRITICAL INDUSTRIES.

(a) IDENTIFICATION OF INDUSTRIES AND DEVELOPMENT OF PLAN.—The Secretary shall—

(1) identify those civilian industries in the United States that are necessary to support a robust manufacturing infrastructure and critical to the economic security of the United States; and

(2) list the major research and development initiatives being undertaken, and the substantial investments being made, by the Federal Government, including its research laboratories, in each of the critical industriews indentified under paragraph (1).

(b) INITIAL REPORT.—The Secretary shall submit a report to the Congress within 1 year after the date of enactment of this Act on the actions taken under subsection (a).

(c) ANNUAL UPDATES.—The Secretary shall annually submit to the Congress an update of the report submitted under subsection (b). Each such update shall—

(1) describe that status of each identified critical industry, including the advances and declines occurring since the most recent report; and

(2) identify any industries that should be added to the list of critical industries.

SEC. 505. RESEARCH, DEVELOPMENT, TECHNOLOGY UTILIZATION, AND GOVERNMENT PROCUREMENT POLICY.

(a) ESTABLISHMENT OF COMMISSION.—The Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, shall establish a Commission on Technology and Procurement (hereafter in this section referred to as the "Commission"), for the purposes of analyzing the effect of Federal Government procurement laws, procedures, and policies on the development of advanced technologies within the United States and making recommendations on how Federal policy could be changed to promote further the development of advanced technologies.

(b) ISSUES.—The Commission shall address the following issues:

(1) To what extent, if any, should Federal Government technology purchase strategies be used to give domestic suppliers a competitive advantage in new generations of existing technologies and initial market penetration for new technologies?

(2) Under what conditions can Federal Government purchases of advanced technology-based products be based on performance specifications rather than on product specifications? Should Federal Government procurement first look to the commercial markets for products that will meet performance specifications before purchasing a unique product that has to be developed?

(3) How can the Federal Government procurement laws, practices, and procedures be used as a strategic tool to foster the use of emerging technologies?

(4) How can the Federal Government ensure that its supplies adopt the principles embodied in the Malcolm Baldrige National Quality Award?

(5) Should Federal Government procurement practices include cooperative efforts between the supplier and the Federal entity to develop products so as to be more easily marketed on a commerical basis? Should a program for the exchange of technical personnel to foster innovation in product development be part of such practices?

(6) To what extent, if any, should Federal Government documents specify standards that are beneficial to domestic suppliers, aid the compatibility of advanced technologies, and speed the commercial acceptance of those technologies, and what would be the role of the Institute in such an effort?

(7) Should Federal Government procurement be linked to the Advanced Technology Program and to technology transfer activities so that specification development can incorporate the latest technical advances available?

(8) To what extent should worldwide, state of the art technology be required in Federal Government procurement?

(c) MEMBERSHIP AND PROCEDURES.—(1) The Commission shall be composed of 15 members, 8 of whom shall constitute a quorum.

(2) The Secretary, the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Administrator of General Services, or their designees who serve in executive level positions, shall serve as members of the Commission.

(3) The Secretary shall appoint as members of the Commission, from among individuals not employed by the Federal Government—

(A) 4 members who are eminent in advanced technology business representing

manufacturing and services industries, including at least 1 member representing labor;

(B) 3 members who are eminent in the fields of technology and international economic development; and

(C) with the concurrence of the Administrator of the Office of Federal Procurement Policy, 3 members who are eminent in the field of Federal Government procurement.

(4) The Secretary shall appoint a Commission chairman from among the members of the Commission. The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act.

(5) The Secretary and the Administrator of the Office of Federal Procurement Policy shall provide such staff as may be required by the Commission to carry out its responsibilities.

(6) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission or otherwise performing duties of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

(d) REPORTS.—(1) The Commission shall, within 1 year after the date of enactment of this Act, submit to the Secretary, the Administrator of the Office of Federal Procurement Policy, the President, and Congress a report containing preliminary recommendations with respect to the issues addressed under subsection (b).

(2) The Commission shall, within 2 years after the date of enactment of this Act, submit to the Secretary and Congress a final report containing final recommendations with respect to the issues addressed under subsection (b).

(e) CONSULTATION.—The Commission shall consult, as appropriate, with the National Commission on Reducing Capital Costs for Emerging Technology.

(f) TERMINATION.—The Commission shall terminate 6 months after the submission of its final report under subsection (d)(2).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992, 1993, and 1994.

SEC. 506. REPORT ON INFORMATION COLLECTION AND DISSEMINATION.

(a) REPORT.—Within 270 days after the date of enactment of this Act, the Secretary shall report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the feasibility of establishing and operating a Federal Online Information Product Catalog (FEDLINE) at the National Technical Information Service which would serve as a comprehensive inventory and authorizative register of information products and services disseminated by the Federal Government and assist agencies and the public in locating Federal Government information. Information protected from public disclosure shall not be included. In studying the concept, the Secretary, acting through the Under Secretary and the Director of the National Technical Information Service, shall consult with officials from appropriate Government agencies, including the Office of Management and Budget, the National Archives, the Government Printing Office, and the Institute, and with representatives of the public, for their views on the optimal composition and format of FEDLINE. Such report shall contain cost estimates and possible funding sources for establishing and operating FEDLINE and shall list any changes in law and regulation that would be required if FEDLINE were to be implemented.

(b) FUNDING.—The Director of the National Technical Information Service may retain and use all monies received, including receipts, revenues, and advanced payments and deposits, to fund obligations and expenses through the end of fiscal year 1993.

(c) ELECTRONIC FORMAT.—Section 212(e)(5) of the National Technical Information Act of 1988 (15 U.S.C. 3704b(e)(5)) is amended by inserting ", including producing and disseminating information products in electronic format" after "engineering information".

SEC. 507. NATIONAL QUALITY COUNCIL.

(a) ESTABLISHMENT AND FUNCTIONS.—There is established a National Quality Council (hereafter in this section referred to as the "Council"). The functions of the Council shall be—

(1) to establish national goals and priorities for Quality performance in business, education, government, and all other sectors of the nation;

(2) to encourage and support the voluntary adoption of these goals and priorities by companies, unions, professional and business associations, coalition groups, and units of government, as well as private and nonprofit organizations;

(3) to arouse and maintain the interest of the people of the United States in quality performance, and to encourage the adoption and institution of Quality performance methods by all corporation, government agencies, and other organizations; and

(4) to conduct a White House Conference on Quality Performance in the American Workplace that would bring together in a single forum national leaders in business, labor, education, professional societies, the media, government, and politics to address Quality performance as a means of improving United States competitiveness.

(b) MEMBERSHIP.—The Council shall consist of not less than 17 nor more than 20 members, appointed by the Secretary. Members shall include—

(1) at least 2 but not more than 3 representatives from manufacturing industry;

(2) at least 2 but not more than 3 representatives from service industry;

(3) at least 2 but not more than 3 representatives from national Quality not-for-profit organizations;

(4) two representatives from education, one with expertise in elementary and secondary education, and one with expertise in post-secondary education;

(5) one representative from labor;

(6) one representative from professional societies;

(7) one representative each from local and State government;

(8) one representative from the Federal Quality Institute;

(9) one representative from the National Institute of Standards and Technology;

(10) one representative from the Department of Defense;

(11) one representative from a civilian Federal agency not otherwise represented on the Council, to be rotated among such agencies every 2 years; and

(12) one representative from the Foundation for the Malcolm Baldrige National Quality Award.

(c) TERMS.—The term of office of each member of the Council appointed under paragraphs (1) through (7) of subsection (b) shall be 2 years, except that when making the initial appointments under such paragraphs; the Secretary shall appoint not more than 50 percent of the members to 1 year terms. No member appointed under such paragraphs shall serve on the Council for more than 2 consecutive terms.

(d) CHAIRMAN AND VICE CHAIRMAN.—The Secretary shall designate one of the members initially appointed to the Council as Chairman. Thereafter, the members of the Council shall annually elect one of their number as Chairman. The members of the Council shall also annually elect one of their members as Vice Chairman. No individual shall serve as Chairman or Vice Chairman for more than 2 consecutive years.

(e) EXECUTIVE DIRECTOR AND EMPLOYEES.—The Council shall appoint and fix the compensation of an Executive Director, who shall hire and fix the compensation of such additional employees as may be necessary to assist the Council in carrying out its functions. In hiring such additional employees, the Executive Director shall ensure that no individual hired has a conflict of interest with the responsibilities of the Council.

(f) FUNDING.—There is established in the Treasury of the United States a National Quality Performance Trust Fund, into which all funds received by the Council, through private donations or otherwise, shall be deposited. Amounts in such Trust Fund shall be available to the Council, to the extent provided in advance in appropriations Acts, for the purpose of carrying out the functions of the Council under this Act.

(g) CONTRIBUTIONS.—The Council may not accept private donations from a single source in excess of $25,000 per year. Private donations from a single source in excess of $10,000 per year may be accepted by the Council only on approval of two-thirds of the Council.

(h) ANNUAL REPORT.—The Council shall annually submit to the President and the Congress a comprehensive and detailed report on—

(1) the progress in meeting the goals and priorities established by the Council;

(2) the Council's operations, activities, and financial condition;

(3) contributions to the Council from non-Federal sources;

(4) plans for the Council's operations and activities for the future; and

(5) any other information or recommendations the Council considers appropriate.

SEC. 508. STUDY OF TESTING AND CERTIFICATION.

(a) CONTRACT WITH NATIONAL RESEARCH COUNCIL.—Within 90 days after the date of enactment of this Act and within available appropriations, the Secretary shall enter into a contract with the National Research Council for a thorough review of international product testing and certification issues. The National Research Council will be asked to address the following issues and make recommendations as appropriate:

(1) The impact on United States manufacturers, testing and certification laboratories, certification organizations, and other affected bodies of the European Community's plans for testing and certification of regulated and nonregulated products of non-European origin.

(2) Ways for United States manufacturers to gain acceptance of their products in the European Community and in other foreign countries and regions.

(3) The feasibility and consequences of having mutual recognition agreements between testing and certification organizations in the United States and those of major trading

partners on the accreditation of testing and certification laboratories and on quality control requirements.

(4) Information coordination regarding product acceptance and conformity assessment mechanisms between the United States and foreign governments.

(5) The appropriate Federal, State, and private roles in coordination and oversight of testing, certification, accreditation, and quality control to support national and international trade.

(b) MEMBERSHIP.—In selecting the members of the review panel, the National Research Council shall consult with and draw from, among others, laboratory accreditation organizations, Federal and State government agencies involved in testing and certification, professional societies, trade associations, small business, and labor organizations.

(c) REPORT.—A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contract with the National Research Council.

SEC. 509. REPORT ON A STRATEGY TO STIMULATE COMPETITIVE RESEARCH.

(a) IN GENERAL.—No later than 120 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report presenting a proposed strategy for improving the university research capabilities of those States which historically have received relatively little Federal research and development funding. The report shall particularly—

(1) analyze recent steps to use the National Science Foundation's Experimental Program to Stimulate Competitive Research as a model for similar programs in several other Federal departments and agencies which fund research and development; and

(2) examine the feasibility and advisability of using that program as a model for Federal research and development agencies which do not currently have similar programs.

(b) ANALYSIS AND DISCUSSION.—The report shall include an analysis and discussion of—

(1) the geographic distribution of Federal research and development grants and contracts;

(2) current Federal efforts to stimulate competitive research; and

(3) the feasibility and advisability of new Federal programs to stimulate competitive research.

SEC. 510. INTERAGENCY COORDINATION.

The Secretary shall, within 180 days after the date of enactment of this Act, submit to the Committee on Science, Space, and Technology and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a plan for coordination of Commerce Department efforts with other Federal agencies for activities related to high-resolution information systems, including research and development activities.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1459) was agreed to.

Mr. FORD. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, I am pleased that the Senate is considering S. 1034, the American Technology Preeminence Act of 1991, which I introduced earlier this session. This important legislation will reauthorize the programs of the Department of Commerce's [DOC] Technology Administration, including its National Institute of Standards and Technology [NIST], and will ensure that DOC's important new initiatives to help strengthen U.S. industrial competitiveness are continued and expanded. The substitute version now before the Senate incorporates the provisions of the bill reported in September by the Commerce Committee and provisions in H.R. 1989, a similar bill passed earlier this year by the House.

THE NEED FOR INDUSTRY-GOVERNMENT PARTNERSHIP ON TECHNOLOGY ISSUES

The need for Government and business to work together to strengthen America's position in industrial technology has never been greater. The United States may have won the cold war, but it is losing the economic war. American companies are losing market share in many sectors, and some industries such as consumer electronics almost have been lost entirely. Equally disturbing, our position in the new technologies that will underpin the industries and markets of the future is much weaker than most Americans realize. A spring 1990 DOC report concluded that the United States is either losing or losing badly relative to Japan in 10 of 12 key emerging technologies. These 10 include such technologies as advanced semiconductor devices, superconducting materials, and high-performance computing. By the year 2000, according to DOC's estimate, the annual world market for products based on the 12 technologies will reach $1 trillion, with the U.S. market alone reaching $350 billion per year. Clearly, the economic stakes here are great. The companies and countries which dominate these new markets will reap great wealth; the countries which lag will see their standards of living stagnate.

Other countries are not sitting on the sidelines. There is a new world economic order, and one key feature is that other governments actively work with their companies to develop these new basic technologies. By sharing costs and risks, Germany, Japan, and now smaller countries such as South Korea have helped to create major economic strength. Yet in the United States, Government support for new technologies relevant to industry has long been a low priority. The Federal Government spends some $70 billion a year to support research and development [R&D]. But according to official Government statistics, the U.S. Government spends only 0.2 percent of that total for the purpose of assisting industrial development. The comparable 1988 figure for the German Government was 14.5 percent. Our U.S. priorities are from a different era, heavy on defense and big science projects.

At a Commerce Committee hearing last March, a leading private group, the Council on Competitiveness, released a report on why the United States no longer can afford to neglect new technologies.

The United States is already losing badly in many critical technologies. Unless the nation acts today to promote the development of generic industrial technology, its technological position will erode further, with disastrous consequences for American jobs, economic growth and national security. The federal government should view support of generic industrial technologies as a priority mission. ("Gaining New Ground," pp. 3-4).

Clearly, we must act to promote new technologies before it is too late.

THE BILL

Mr. President, since the early 1980's Congress has tried to respond to this serious and growing problem. In 1980, and again in 1986 and 1989, we passed legislation to make exising Federal research in universities and Government laboratories more accessible to private companies. We have increased the National Science Foundation's support for engineering and boosted Defense Department funding for so-called dual-use technologies which are important to both the military and the commercial sector. And in 1988, in adopting provisions which I authored, Congress created a true civilian technology agency, DOC's Technology Administration.

Under the supervision of an Under Secretary for Technology, the Technology Administration includes both a policy office and NIST, the one Federal laboratory whose primary mission is to assist U.S. industry. The 1988 legislation not only strengthened NIST's long-respected internal research and technical services programs but also created new technology extension activities to help small manufacturers modernize a new Advanced Technology Program [ATP] to provide seed money for industry-led efforts to develop the key new technologies of the future.

The substitute bill now before the Senate would continue these important efforts by reauthorizing these Technology Administration programs for fiscal years 1992 and 1993. It also would amend some provisions regarding the ATP, make a change in metric policy, make five small amendments in the Stevenson-Wydler Technology Innovation Act, and require several studies.

In my view, NIST remains an underfunded and undersupported agency. This bill represents a strong congressional endorsement of the Technology Administration and NIST and its programs. However, we cannot stop here. While I applaud the administration's proposal to double the budget of NIST's internal laboratory program over the next 5 years, I hope that the adminis-

tration also will work with us to expand further the external programs created in the 1988 law.

RELATED ISSUES

Several important issues have arisen in the review of this bill. First, this bill, like an earlier version reported during the last Congress, requires companies to meet certain basic criteria before becoming eligible to apply for funding under NIST's ATP. All companies, whether domestically owned or foreign owned, must have investments in the United States and must employ Americans. In addition, a foreign-owned company must demonstrate that its government offers comparable access and intellectual property protection to American firms. I feel strongly that in exchange for being eligible to receive taxpayer funds, any company, whether domestic or foreign, must meet these basic conditions.

Second, the bill raises the important issue of manufacturing and manufacturing technology. Having the finest new inventions in the world is not enough unless American companies can use such inventions to successfully manufacture products—and manufacture them with quality, speed, and at competitive prices. The United States remains an accomplished manufacturing country, but we are not doing as well as we should. We seriously lag the Japanese, for example, in adopting new manufacturing technologies. NIST already does much to help industry develop and deploy new manufacturing technologies and techniques, but more needs to be done. For that reason, on June 19 of this year I, along with Senator GORE and several of our colleagues, introduced S. 1330, a bill to expand DOC's programs to assist U.S. manufacturing. The Commerce Committee approved this new bill on October 3. S. 1330 complements S. 1034, and I intend to seek full Senate consideration of that bill soon.

Third, the substitute deletes a provision in the reported bill concerning NIST's personnel system. The personnel provision is no longer needed. It had been included in the bill in order to extend a personnel demonstration project at NIST, an experiment which has given the agency great flexibility in hiring new scientists and engineers and which is providing valuable information to the Office of Personnel Management [OPM]. OPM, however, has been conducting its own review of the NIST program and has now decided to grant an administrative extension of the project through September 30, 1995. Thus, no legislative extension is necessary.

The OPM decision comes with the encouragement and approval of the chairman and ranking Member of the Committee on Governmental Affairs, Mr. GLENN and Mr. ROTH, and the chairman and ranking member of the Subcommittee on Federal Services, Post Office, and Civil Service, Mr. PRYOR and Mr. STEVENS. I am grateful to them for their assistance in this matter. I will ask unanimous consent that the extension letter from OPM be printed at the conclusion of my remarks.

Lastly, the proposed substitute drops all ATP loan and recoupment proposals. Congressman MINETA, Senator ROCKEFELLER, and I all support creating a $10 million pilot loan program, in affiliation with the ATP, to help companies refine and demonstrate the feasibility of new products and processes. This work would still be pre-competitive; we are not talking about subsidizing the manufacture of products. Nonetheless, the White House strongly opposes the provision. In the interest of passing the bill, we will drop the provision for now. The proposed substitute now before the Senate also drops a loan provision in the House-passed bill. This recoupment provision would require all organizations which make money from ATP-assisted inventions to reimburse the Government. There is concern that turning the entire ATP effort into a loan program would place a great regulatory burden on ATP winners and deter applications. In addition, the administration opposes the recoupment provision. For these reasons, we have not included this provision in the proposed substitute before the Senate.

CONCLUSION

In closing, Mr. President, I thank my colleagues who have worked with me on this legislation, including both the members of the Commerce Committee and the distinguished chairman and members of the House Committee on Science, Space, and Technology. I also want to thank the growing number of associations and companies which have provided suggestions and support. I especially want to express my appreciation to the new Advanced Technology Coalition, which includes groups such as the American Electronics Association, manufacturing organizations, and the Industrial Union Department of the AFL-CIO. I commend these organizations for their vision of a country that does not have to settle for second-best technology and stagnating wages, a country where government, industry, and labor can work together to promote economic growth.

This bill should have the support of everyone—we can never do too much to promote U.S. economic competitiveness. When I served as South Carolina's Governor, economic development was my highest priority, and this legislation represents my continued commitment to this issue. I look forward to working with my colleagues and administration officials as we proceed with this and other important technology legislation.

Mr. President, this is a sound and important bill, and I urge our colleagues to support it.

I ask unanimous consent that the letter from OPM that I referred to earlier be printed in the RECORD.

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

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, October 7, 1991.

Mr. JOHN W. LYONS,
Director, National Institute of Standards and Technology, Gaithersburg, MD.

DEAR MR. LYONS: This is in response to your letter of August 23, 1991, regarding the National Institute of Standards and Technology (NIST) personnel management demonstration project. Your letter requests an extension of the project, which is scheduled to end on December 30, 1992.

OPM's statutory authority to continue a demonstration project beyond 5 years is limited. Title 5 of the United States Code, which sets the 5-year time limit on all demonstration projects, grants OPM the authority to extend a project "to the extent necessary to validate the results of the project" [5 U.S.C. 4703(d)(1)(B)].

Significant changes to the NIST performance management system have been implemented this year, and we agree that they cannot be fully evaluated within the original 5-year timeframe. Therefore, we are extending the NIST demonstration project until September 30, 1995.

Because, in our opinion, the Total Compensation Comparability (TCC) component of the demonstration project does not warrant further evaluation, the TCC report as described in Section 10(c) of Public Law 99-574 need not be included in the extension.

One effect of this extension will be increased evaluation costs for OPM. We anticipate at least two additional reports and additional expenses of approximately $700,000. In light of the fact that we would not extend the costly TCC report requirement, we would appreciate NIST making a contribution to the cost of the extended evaluation. We commend you on your commitment to innovation and hope that the NIST project will continue to make positive contributions to our efforts to improve Federal human resources management.

My staff will contact your staff regarding the appropriate public notification requirements for the extension.

Sincerely,

CONSTANCE BERRY NEWMAN,
Director.

Mr. GORE. Mr. President, as chairman of the Subcommittee on Science, Technology, and Space I want to express my strong support for the bill now before the Senate, S. 1034, the American Technology Preeminence Act of 1991. This bill provides needed reauthorizations and a strong congressional endorsement for the technology programs of the Department of Commerce [DOC].

All of us in the Senate know that the American economy is lagging, that American companies are losing market share in many sectors, and that American wages are stagnating even in manufacturing and high technology. Americans now face the most intense world economic contest in our history, and every middle-class American family is now feeling the chill from our Nation's lagging economic performance. As a

country, all of us—business leaders, workers, academia, and government—must work together to restore American economic competitiveness and long-term national growth.

S. 1034 is a modest but badly needed step in the right direction. At a time when the U.S. Government spends only 0.2 percent of its $70 billion annual research and development budget to promote industrial development, this bill expands DOC's support for industry-led efforts to develop and deploy important commercial technologies. The bill will help industry develop new basic technologies in such critical areas as intelligent manufacturing, superconductivity, semiconductors, fiber optics, high-resolution systems, and biotechnology. According to DOC's own estimate, products based on these and other key emerging technologies will, by the year 2000, generate $1 trillion in worldwide annual sales. These technologies will shape the future, and the United States cannot afford to be the loser.

Mr. President, I am pleased to join Chairman HOLLINGS in proposing this bill to the full Senate. It deserves speedy passage.

Mr. ROCKEFELLER. Mr. President, I really regret that the minority, on behalf of the President, has objected to even considering the amendment I had intended to offer to this bill. It would have been an important step toward restoring America's competitiveness. It would have presented us with a choice. Do we want to continue to focus the Government's efforts on behalf of critical technologies exclusively on R&D, or do we want to help turn our R&D support into an engine that leads to manufacturing and jobs our economy desperately needs? Federal research support is critical to innovation. We all support that. But competitiveness means being able to move those innovations from the showcase to the market place by translating them into products, into efficient production, and into jobs.

The amendment is simple. It would authorize the Commerce Department's Technology Administration to provide long-term, relatively low-cost loans to U.S. companies to develop and commercialize critical technologies. The program is intended for small and medium sized companies and would focus in such areas as electronics, biotechnology, and advanced materials.

Since the amendment would simply redirect a small portion of the money authorized for the National Institute of Standards and Technology's (NIST) Advanced Technology Program, which is a research program, it would not provide for new budget authority or additional outlays. I estimate that, under credit reform, this $10 million allocation would support a loan program of $50–100 million.

The reasoning behind this amendment is equally straightforward. It is designed to refocus Federal efforts on what we don't do well, and there is no shortage of experts who have come to the conclusion that that is precisely what we need. Even the administration's technology experts make the same point, acknowledging the problem at the same time he opposed doing anything about it:

> The U.S. is a leader in research on advanced manufacturing technology, but slower with respect to its development, deployment and use.

Thus, Mr. President, for many of us the debate on these issues is over and the solution clear. The President, apparently, still does not get it. I had hoped to use the opportunity of this amendment to try to persuade him that the Government needs to show some leadership on technology commercialization, but the minority has prevented that debate from taking place.

In the interest of getting the NIST authorization enacted—because it is an important bill—I am not going to press the amendment at this point. But I want to say very clearly that I will be back early next year. I hope the chairman of the committee will join me in requesting a study of this problem by the General Accounting Office so that we can make even more clear to those who apparently have not gotten the message why commercialization assistance is so important.

I also want Senators to know early that this will be an issue early next year on an appropriate vehicle. We have wasted 10 years on the foolish assumption that the private sector can solve this problem on its own. By the time the President learns the futility of that strategy, there will be no one left to save.

It is ironic that the administration's blindness extends only to industry. Just last year Congress passed and the President signed a farm bill containing an agriclture commercialization loan program very similar to what I intended to propose today. The administration did not seem to have any problem with that—indeed its author, then-Representative Madigan has moved onto bigger and better things in the administration.

Mr. President, we should rise to the challenge again. The erosion of our manufacturing and critical technology base is accelerating. It directly jeopardizes our national security and our ability to retain the world's economic leadership, which is increasingly the key element of national security. If we cannot compete globally in economic terms then we will not be able to sustain our foreign policy objectives either. We will simply have no credibility. That is why I will return with this issue in 1992. And that is why ultimately those of us who care about competitiveness will win.

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 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 third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of the House companion, H.R. 1989; that the Senate proceed to its immediate consideration; all after the enacting clause be stricken, the text of S. 1034, as amended, be substituted in lieu thereof; that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that S. 1034 be returned to the calendar.

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

So the bill (H.R. 1989), as amended was deemed read a third time, and passed.

PATENT AND TRADEMARK OFFICE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3531, the Patent and Trademark Office Authorization Act of 1991 just received from the House, that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table.

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

The bill (H.R. 3531) was deemed read three times and passed.

Mr. BIDEN. Included in the Patent and Trademark Office authorization bill is a provision modifying the authority of the Commissioner of the Office. I authored this provision and believe it represents a needed change in the operations of the Office.

The provision I authored will allow the Commissioner greater authority to establish programs to help inventors demonstrate the characteristics of their patented products. The authority is rather broad, and the Commissioner is expected to assure that any new programs operate within the broader mission of the PTO. However, within that mission, there is a great deal that could be done, in a cost effective method, to help inventors.

This new authority reflects technological changes that have taken place over the years and the type of products that are of increasing importance to our economic strength. For example, under existing authority the Commissioner is limited to creating libraries to disseminate patent information. But there are limits to what can be shown

on paper, or more recently computer, files on patents. The information is detailed to be sure, but the Patent and Trademark Office can help create more practical demonstrations of new products without treading upon its neutral role in patent proceedings. That is the opportunity this new authority presents.

To illustrate, PTO will now have the authority to create laboratories with equipment appropriate to demonstrating the characteristics of a particular technology, advanced ceramics or composite materials for example. The laboratories would not advocate any particular product and would be available to all who could make use of the equipment. A laboratory of this type would be of tremendous assistance to smaller companies, allowing them access to machinery and customers that they might not otherwise have. This would be a step beyond the library system that exists now, but is far short of an advocacy role that PTO must avoid.

The market for most companies is not just starting to become international, it is well into that transition. It is an intensely competitive market, in which American companies need all the information they can get to remain in the forefront of developments in their industry. The new authority of the Commissioner will increase the dissemination of patent information, but in a way that is of much greater utility to inventors and customers.

I would like to thank the chairman of the Patents, Copyrights and Trademarks Subcommittee, Mr. DECONCINI, for his assistance and cooperation in seeing this provision included in the authorization bill. I also look forward to working with the Commissioner of the Patents and Trademark Office in putting this new authority to the fullest use possible.

CORRECTION OF H.R. 3531

Mr. FORD. Mr. President, I now send to the desk on behalf of Senator DECONCINI a correcting resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 85) to correct a technical error in the enrollment of the bill H.R. 3531, and for other purposes.

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.

The PRESIDING OFFICER. Is there further discussion? If not, the question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 85) was agreed to.

(The text of Senate Concurrent Resolution, 85 as agreed to, will be printed in a future edition of the RECORD.)

Mr. FORD. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 1392 regarding telemarketing fraud; that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1392) to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with the telephone, 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.

AMENDMENT NO. 1460

Mr. FORD. Mr. President, I send an amendment by Senator BRYAN to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BRYAN, proposes an amendment numbered 1460.

On page 4, strike "or" on line 5, strike "(C)" on line 6 and insert in lieu thereof "(D)", and insert between lines 5 and 6 the following:

(C) the act or practice by a person (other than an act or practice permitted in a valid agreement with a member of a credit card system or the member's agent) of knowingly presenting to a member of a credit card system or the member's agent, for payment, one or more evidences or records received from another person of transactions involving goods or services offered by telemarketing and paid for by credit card; or

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1460) was agreed to.

Mr. FORD. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BRYAN. Mr. President, I am pleased that the Senate is considering S. 1392, the Telemarketing Consumer Fraud and Abuse Prevention Act. I also ask that a technical amendment correcting an inadvertent omission in one of the definitions in the bill as introduced be included in the Senate's consideration of this bill.

I believe telemarketing fraud is a serious problem that deserves immediate attention. This legislation, with one clarifying addition, already passed the Senate in June of this year as an amendment to the crime bill. Unfortunately, the crime bill conferees were not able to reach agreement on the measure given the short time constraints of the crime bill conference. I believe we need to move as expeditiously as possible to complete work on this legislation in this Congress, and am pleased that the Senate is considering the bill as a freestanding measure.

Telephone sales have become an important part of American business and, when properly carried out, are a convenience to consumers, allowing them to shop at home. However, telemarketing fraud is the deceptive peddling of goods and services over the telephone. Typically, a consumer is contacted and offered goods and services at discount prices or of a nature "too good to be true." Payment is generally required in advance, often by credit card. When the goods or services arrive, the consumer finds that the bargain doesn't exist, or is not of the promised value. A related problem is the abuse of the telemarketing process by telephone calls that are made at unreasonable hours, by machines that cannot be disconnected by the person called, or utilizing other techniques of harassment.

As telephone sales have become an increasingly popular and convenient way for consumers to purchase goods and services, it is, perhaps, inevitable that unscrupulous individuals will utilize the system to defraud consumers. Testimony before the Consumer Subcommittee, which I chair, has indicated that telemarketing fraud is costing American consumers at least $1 billion per year. On a more personal scale, the subcommittee has received testimony from citizens of my own State of Nevada describing fraudulent practices that threatened to deprive unsuspecting citizens of their life savings.

Telemarketing fraud is indeed a national problem, although some States, including my State of Nevada, often become havens for such activity. I am pleased that the State government in Nevada has taken what appear to be very successful steps to address this problem at the State level. However, because the fraudulent activity often is conducted across State lines, the States and the Federal Government must work together on this issue to develop an effective solution. I know that the Federal Trade Commission and the State attorneys general have begun this process by instituting a joint databank to share information about telemarketing fraud trends. The bill we

are considering today is an effort to further that cooperation and to maximize consumer protection.

The bill would require the Federal Trade Commission to promulgate specific rules governing telemarketing activity, including a definition of telemarketing fraud, which would be prohibited by the act. The bill also contains a definition of "credit card laundering" which would be included in the telemarketing fraud prevented by the bill. Credit card laundering is the practice of submitting credit card charges through legitimate merchants in order to hide the identity of the fraudulent telemarketer. In addition to the losses suffered by consumers due to fraud, both the legitimate merchants and the credit card companies may end up taking significant losses as a result of this practice.

Other areas in which the FTC would be required to consider rulemaking include a cooling off period in which consumers could rescind telephone purchases; a requirement that delivery of goods ordered be made within a specified time period; restrictions on the hours and types of machines that can be used to made telemarketing calls, and recordkeeping requirements.

Additionally, the bill would permit the States and the FTC to work together to enforce the Federal law, by permitting the State attorneys general to bring suit under the Federal law. The States would have to notify the FTC of such actions, and the FTC would have the absolute right to intervene in such actions. Because some States, like Nevada, have enacted State laws to address this problem, my bill would provide for the continued applicability of that State law upon application to the FTC.

The bill would also permit actions by private parties to enforce the Federal law, but only when the amount in controversy exceeds $50,000. This provision is intended to provide for maximum enforcement of the law, but to prevent frivolous and unnecessarily burdensome lawsuits.

Finally, the bill would provide for expanded venue and service of process for those enforcing the law. This will address the problem that currently exists when fraudulent telemarketers move their operations rapidly across State lines to avoid enforcement.

Mr. President, telemarketing fraud is a difficult problem, and finding a legislative solution is challenging. I believe that this bill strikes the proper balance between Federal and State enforcement, and between the needs of legitimate telemarketers and the fullest protection of consumers. I urge my colleagues to support me and the bill's cosponsor, my Commerce Committee colleague Senator MCCAIN, in enacting this legislation.

Mr. President, I ask unanimous consent that the text of the bill and technical amendment be printed in the RECORD.

Mr. MCCAIN. Mr. President, telemarketing is one of the fastest growing industries in the United States. This industry has provided American consumers greater options for obtaining information, entertainment, and home shopping opportunities. A great many of these telemarketing companies are legitimate, and operated by honest businessmen and women. Unfortunately, the expansion of the industry has also led to the emergence of telemarketing and consumer fraud.

Consumer fraud has been the focus of my attention for some time, particularly the issues of health and consumer fraud targeted at the elderly. On March 16, 1988, I testified before the Federal Trade Commission [FTC] on the issue of fraud and the elderly. On that occasion, I spoke of my concerns about the increase in cases of health care and consumer fraud by scam operators who prey on the vulnerability of senior citizens, leaving behind unsatisfied, and in some cases, physically harmed seniors who relied on fraudulent products and health care schemes. Later that year, I introduced S. 2326, the Consumer Fraud Prevention Act. The following year, in 1989, I introduced S. 1441, which incorporated S. 2326. Sharing the same concerns as I have about consumer abuse, my colleague from Nevada, Senator BRYAN, introduced S. 2494, the Telemarketing Fraud and Abuse Prevention Act, in the last session of Congress. I was very pleased to have worked with him on a compromise which consolidates both of our bills, and our efforts were embodied in S. 2494, the Telemarketing and Consumer Fraud and Abuse Protection Act, which was passed in the Senate by unanimous consent in the fall of 1991.

I am pleased to be working with Senator BRYAN again this Congress in sponsoring S. 1392. This legislation is identical to S. 2494 with one exception. S. 1392 prohibits credit card laundering, a technique frequently used by those peddling worthless goods to increase sales.

Telemarketing and consumer fraud cost American taxpayers tens of billions of dollars per year, and, in the case of health fraud, can cost lives as well. Such fraud is often committed by individuals who escape legal action by dismantling their operation and relocating to begin the operation again. In the cases of these boilerroom scams, both the victims and the perpetrators are difficult to locate since the operations often consist of nothing more than phone banks which do not readily provide detailed evidence of illegal activity.

There are several areas of fraud to which the elderly are particularly susceptible.

One area, health fraud, is one of our Nation's leading consumer fraud and health care problems. Older Americans as a group experience deteriorating health and a greater number of terminal illnesses than the rest of the population. In searching for a way to prolong life and combat illness, the elderly are prone to believe the claims of scam operators.

Health care fraud can be life-threatening. In some cases, the so-called cure may be deadly as well. In other cases, the product may be harmless, but a victim may be led to choose the product for treatment of an illness instead of a physician-recommended course of treatment. Again, the result could be quite serious.

Not only is such fraud dangerous to the consumer's health, it is also costly. Current projections by the National Council Against Health Fraud indicate that this activity is costing Americans close to $25 billion per year.

A few examples from my own State of Arizona illustrate the magnitude of the problem.

An advertisement was placed in the Arizona Republic and Phoenix Gazette newspapers that read: "Alzheimers' disease—symptoms of senility. At last—now there is hope! Call [this number] for help. Free—no charges—no fees."

Another case involved a phony cancer cure called Tumorex. The ad read:

> Cancer patients undergo a six-day therapy of daily tumorex injections administered by a licensed M.D. or R.N. This is augmented by amino acid capsules taken ½ hour before each meal. Treatment is given Monday through Saturday. Any enzyme program must be discontinued 24 hours before the first day of treatment. In most cases, six days of treatment are sufficient; however, 12 days or more are required for some severe cases. Colon cleansing is important before treatment and imperative after treatment. $2,500 includes the 6- or 12-day treatment, and transportation (meals and lodging not included). We suggest cashier's or traveler's checks, however, MasterCard and Visa are acceptable.

Mr. President, Tumorex is really the amino acid L-Arginine, which can be purchased at local health food stores at a cost of $5.50 for 100 tablets.

A second issue of particular concern to older Americans is consumer fraud via the television or telephone. Consumer items for purchase, and medical and health services are commonly marketed in this manner. These sellers, and their merchandise, appear legitimate on the surface. The consumer often loses, however, by not receiving the ordered item, receiving a copy rather than an authentic item, or by suffering some financial or health loss.

One example of this type of telemarketing scam in Arizona involved a nationwide, shop-at-home program. This program, which was aired over nationwide television, involved a listing of various items for sale. The money for these items was sent to the company which, in turn, cashed the checks and never delivered the merchandise. The

operation generated over 1,300 complaints.

A third area of great concern is that of life care communities, some of which cause the elderly to suffer financial loss as a result of fraud or mismanagement. While life care communities can be a practical solution to the problem of assuring constant care for the elderly, there have been several occasions where senior citizens have lost their investments due to fraud or mismanagement. This has occurred in the misrepresentation of financial risks, mortgage-lender's interests in the life care community, and the misuse of the entrance fee financing.

The structure of the life care industry facilitates such abuses, and it is time that we take a close look at the industry's practices and ensure that life care communities remain safe alternatives for senior citizens.

Another area of fraud that is emerging as a great threat to both consumers and the banking community is that of credit card laundering in telemarketing. This is exemplified by the situation where a fraudulent telemarketer uses the credit card privileges of a merchant to obtain legitimate credit card drafts as records of transactions to receive payment from the unsuspecting customer's bank.

Consumers fall prey to the attractive descriptions of an item by a telemarketer, and provide their credit card members to the so-called seller. The telemarketer then submits that number to a willing merchant with legitimate credit card privileges, who submits the credit card drafts to the corresponding bank. This activity often results in a customer not receiving the item or receiving any item which is different from the promised item. An additional effect on the banking institutions is that, upon receiving the complaint from the consumer, or upon acquiring the accounts of telemarketing merchants who went out of business, the institutions must settle the chargebacks against their own accounts when the merchants are unable to pay them.

This exact scenario played out in my State of Arizona. On February 15, 1990, Gateway National Bank in Phoenix was declared insolvent by the Office of the Comptroller of the Currency. Just 1 year prior to insolvency Gateway, claimed assets of $11 million. One of the main reasons attributed to its demise was the overwhelming number of chargebacks the bank had to absorb because of merchants' failure to pay. These chargebacks ate away at the bank's equity capital, depleting it so as to render the bank insolvent.

The message here is clear: With credit card fraud, the consumer and the banking community are the big losers.

In addressing these many issues, this legislation would combat telemarketing, consumer and credit card fraud in the following ways:

It offers a solution to the problems facing law enforcement officers working toward bringing scam operators to justice, by expanding the venue and service of process provisions in the Federal Trade Commission Act. Thus, authorities will be permitted to summon and serve process upon any party, regardless of where they live or conduct business. This way, law enforcement officials will be able to bring scam operators to justice even if they have packed up their operation.

Next, it enhances the enforcement authority of the Federal Trade Commission [FTC] by amending the Right to Financial Privacy Act of 1978 to permit access to financial records of consumer fraud suspects, without providing advance notice to the suspects, with court approval, if the FTC can show that the funds are likely to disappear during an investigation.

Further, it identifies credit card laundering as a fraudulent telemarketing act or practice.

This legislation offers protection to consumers against telemarketing fraud and abuse by requiring the FTC to develop telemarketing rules protecting consumers. The rules would include: First, refunds for untimely delivery of goods or services; second, order cancellations; third, time restrictions on unsolicited sales calls; fourth, a prohibition on the use of equipment that does not allow the person called to hang up and disconnect the call immediately; and fifth, requirements for proper recordkeeping for the purposes of establishing evidence of proper business practices. The bill also directs the FTC to promulgate a rule to combat fraudulent telemarketing acts and practices. This rule is intended to be flexible in order to reflect on the changing nature of these illegal practices. These provisions would protect unsuspecting consumers from both unwelcome, and unsolicited goods or services, and, more importantly, fraud.

Further, it will allow enforcement assistance by the States by permitting State attorney's general to enforce the proposed FTC telemarketing rules after first notifying the Commission. After receiving a copy of the State's complaint, the Commission may intervene as a matter of right in the proceeding. This provision assures joint enforcement efforts by both State and Federal authorities without precluding one or the other.

Next, it permits private individuals to sue for violation of the FTC telemarketing rules when the amount in controversy exceeds $50,000. As in the case of the State attorney's general, a plaintiff would be required to notify the FTC prior to bringing suit.

These last three provisions are subject to sue for violation of the FTC telemarketing rules when the amount in controversy exceeds $50,000. As in the case of the State attorney's general, a plaintiff would be required to notify the FTC prior to bringing suit.

These last three provisions are subject to a 5-year sunset clause, at which time they will cease to be effective. This will allow Congress the opportunity to evaluate the reasonableness and effectiveness of the telemarking fraud and enforcement rules before continuing them indefinitely.

Another important provision amends the Federal Trade Commission Act to clearly set forth that it is unlawful to disseminate any false advertisement for the purpose of inducing the purchase of services, such as health care or home repair services. This provision addresses the problems and dangers of health care fraud by further amending the Federal Trade Commission Act to expand the definition of "physical evidence" for the purposes of bringing these cases to court. The definition of "physical evidence" should be expanded to include services, as well as medical devices, food products, nutritional or cosmetic products, or audio or video recordings, all things which are often pivotal evidence in consumer fraud cases generally, and health care fraud in particular.

It also permits the FTC to bring an action for criminal contempt for violation of an FTC order, it is presently authorized to institute a proceeding for civil contempt.

In addition, the legislation further requires the FTC to establish a clearinghouse for telemarketing inquiries to be made available to the public.

Finally, it requires the FTC to conduct a study of unfair or deceptive acts or practices in the life care home industry and report to Congress on the results of that study. This would be a starting point toward ensuring that the elderly are not misled when choosing a life care community, and can feel confident when making this very important decision.

Mr. President, this legislation is an important step toward minimizing the practice of telemarketing, consumer, and credit card fraud, and helps protect senior citizens in particular, who are all too often targeted as victims of fraud, and I ask for the support of my colleagues on this important legislation.

The PRESIDING OFFICER. The quesion is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

S. 1392

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Telemarketing and Consumer Fraud and Abuse Prevention Act".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "attorney general" means the chief legal officer of a State;

(2) "Commission" means the Federal Trade Commission;

(3) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States;

(4) "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which has involved interstate telephone calls; the term does not include other use of a telephone in connection with business or personal transactions, nor does the term include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description or illustration of the goods or services offered for sale;

(B) includes the business address of the seller;

(C) includes multiple pages of written material or illustrations;

(D) is issued not less frequently than once a year; and

(E) is at least the third catalog satisfying the requirements of subparagraphs (A) through (D) that has been issued by the seller within the last five years,

where the seller does not place calls to customers but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation; and

(5) "credit card laundering" means—

(A) the act or practice by a person engaged in telemarketing (other than an act or practice permitted in a valid agreement with a member of a credit card system or the member's agent) of transferring to another person to be presented to a member of a credit card system or the member's agent, for payment, one or more evidences or records of transactions involving goods or services offered by telemarketing and paid for by credit card;

(B) the act or practice by a person acting on behalf of a person engaged in telemarketing (other than an act or practice permitted in a valid agreement with a member of a credit card system or the member's agent) of causing or arranging for a third person to present to a member of a credit card system or the member's agent, for payment, one or more evidences or records of transactions involving goods or services offered by telemarketing and paid for by credit card;

(C) the act or practice by a person (other than an act or practice permitted in a valid agreement with a member of a credit card system or the member's agent) of knowingly presenting to a member of a credit card system or the member's agent, for payment, one or more evidences or records received from another person of transactions involving goods or services offered by telemarketing and paid for by credit card; or

(D) such other acts or practices defined in the rules of the Commission as credit card laundering.

TELEMARKETING RULES

SEC. 3. (a) RULES ON TELEMARKETING ACTIVITIES.—The Commission shall prescribe rules regarding telemarketing activities. In prescribing such rules, the Commission shall consider the inclusion of—

(1) a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period a refund be required;

(2) authority for a person who orders a good or service through telemarketing to cancel the order within a specified period;

(3) restrictions on the hours of the day when unsolicited telephone calls can be made to consumers;

(4) a prohibition of telemarketing generated by computers on equipment that does not permit the individual called to terminate the telephone call; and

(5) recordkeeping requirements.

(b) PROHIBITION OF FRAUDULENT TELEMARKETING ACTS OR PRACTICES.—The Commission also shall prescribe rules prohibiting fraudulent telemarketing acts or practices and shall include in such rules a definition of the term "fraudulent telemarketing acts or practices". Credit card laundering shall be a fraudulent telemarketing act or practice.

(c) DEADLINE; ADMINISTRATIVE PROCEDURE.—The Commission shall prescribe the rules under subsections (a) and (b) of this section within 180 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(d) TREATMENT OF RULE VIOLATIONS.—Any violation of any rule prescribed under subsection (a) or (b) of this section shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices (subject to any remedy or penalty applicable to any violation thereof).

(e) EFFECT ON STATE LAW.—The rules promulgated under this section shall not be construed as preempting State law.

ACTIONS BY STATE ATTORNEYS GENERAL

SEC. 4. (a) AUTHORITY OF STATES.—Whenever the attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule, regulation, or order of the Commission under this Act, the State may bring a civil action on behalf of its residents to enjoin such telemarketing, to enforce compliance with any rule, regulation, or order of the Commission under this Act, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) COURT JURISDICTION.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this section to enforce any liability or duty created by any rule, regulation, or order of the Commission under this Act, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of any rule, regulation, or order of the Commission under this Act, including the requirement that the defendant take such action as is necessary to remove the danger of violation of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(c) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (1) to intervene in the action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(d) VENUE; SERVICE OF PROCESS.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the telemarketing occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(e) EFFECT ON STATE POWERS OF ATTORNEYS GENERAL.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(f) EFFECT ON ACTIONS UNDER STATE STATUTE.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(g) CIVIL ACTION BY COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

ACTIONS BROUGHT BY PRIVATE PERSONS

SEC. 5. (a) DEFINITION.—As used in this section, the term "person adversely affected by telemarketing" means—

(1) any person who has incurred loss or damage in connection with telemarketing and who actually purchased goods or services through telemarketing, or paid or is obligated to pay for goods or services purchased through telemarketing;

(2) any financial institution that has incurred loss or damage in connection with telemarketing; or

(3) any member organization comprised of financial institution members, or any parent organization of such member organization, if one or more of the financial institution members is eligible to bring a civil action under this subsection.

Such term does not include a governmental entity.

(b) PRIVATE RIGHT OF ACTION.—(1) Any person adversely affected by any pattern or practice of telemarketing which violates any rule, regulation, or order of the Commission under this Act may, within 3 years after discovery of the violation, bring a civil action against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule, regulation, or order of the Commission under this Act, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have ex-

clusive jurisdiction over all civil actions brought under this section to enforce any liability or duty created by any rule, regulation, or order of the Commission under this Act, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of any rule, regulation, or order of the Commission under this Act, including the requirement that the defendant take such action as is necessary to remove the danger of violation or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) Whenever the Commission has instituted a civil action for violation of any rule prescribed under this Act, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(5) Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the telemarketing occurred or is occurring and process in such case may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(c) AWARD OF COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (b), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(d) RIGHTS UNDER STATUTE OR COMMON LAW.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

VENUE

SEC. 6. Subsections (a) and (b) of section 13 of the Federal Trade Commission Act (15 U.S.C. 53) are each amended by adding at the end thereof the following: "Whenever it appears to the court that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, the court may cause such person, partnership, or corporation to be summoned without regard to whether they reside or transact business in the district in which the suit is brought, and to that end process may be served wherever the person, partnership, or corporation may be found.".

SUBPOENA

SEC. 7. (a) PHYSICAL EVIDENCE DEFINED.—Section 20(a) of the Federal Trade Commission Act (15 U.S.C. 57b-1(a)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting immediately after paragraph (6) the following new paragraph:

"(7) The term 'physical evidence' means any object or device, including any medical device, food product, drug, nutritional product, cosmetic product, or audio or video recording.".

(b) ISSUANCE OF DEMAND.—Section 20(c)(1) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(1)) is amended—

(1) by inserting "physical evidence or" immediately after "any" the second time it appears;

(2) by inserting "to produce such physical evidence for inspection," immediately before "to produce";

(3) by inserting "physical evidence," immediately after "concerning"; and

(4) by inserting "evidence," immediately before "material, answers,".

(c) CONTENTS OF DEMAND.—Section 20(c)(3) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(3)) is amended—

(1) by inserting "physical evidence or" immediately before "documentary material";

(2) in subparagraph (A)—

(A) by inserting "physical evidence or" immediately before "documentary"; and

(B) by inserting "evidence or" immediately after "permit such";

(3) in subparagraph (B), by inserting "evidence or" immediately before "material"; and

(4) in subparagraph (C), by inserting "evidence or" immediately before "material".

(d) PRODUCTION OF EVIDENCE IN RESPONSE TO DEMAND.—Section 20(c)(10) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(10)) is amended by inserting "physical evidence or" immediately before "documentary material" each place it appears.

FALSE ADVERTISEMENTS CONCERNING SERVICES

SEC. 8. Section 12(a) of the Federal Trade Commission Act (15 U.S.C. 52(a)) is amended by inserting "services," immediately after "devices," each place it appears.

CLEARINGHOUSE

SEC. 9. The Commission shall establish a clearinghouse for inquiries made to Federal agencies concerning telemarketing. The clearinghouse will provide information (other than information which may not be disclosed under section 552(b) of title 5, United States Code, or under regulations prescribed by the Commission to implement sections 552(b) of title 5, United States Code) to anyone making inquiries respecting persons engaged in telemarketing or direct such inquiries to the appropriate Federal or State agency.

FINANCIAL DATA

SEC. 10. Section 1109(a)(3) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409(a)(3)) is amended—

(1) by redesignating subparagraph (E) as subparagraph (F);

(2) by striking "or" at the end of subparagraph (D); and

(3) by inserting immediately after subparagraph (D) the following new subparagraph:

"(E) dissipation, removal, or destruction of assets that are subject to forfeiture, seizure, redress, or restitution under any law of the United States by reason of having been obtained in violation of law; or".

CRIMINAL CONTEMPT AUTHORITY

SEC. 11. Section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)) is amended—

(1) in subparagraph (A) by striking "civil" the first place it appears and inserting in lieu thereof "Federal court"; and

(2) by adding at the end the following: "The Commission may bring a criminal contempt action for violations of orders obtained in cases brought under section 13(b) of this Act in the same manner as civil penalty and other Federal court actions to which this subsection applies. Such cases may be initiated by the Commission on its own complaint, or pursuant to its acceptance of an appointment by a court to assist it in enforcing such orders pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure.".

ADMINISTRATION AND APPLICABILITY OF ACT

SEC. 12. (a) ENFORCEMENT.—Except as otherwise provided in sections 4 and 5 of this Act, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) APPLICABILITY OF FTCA.—The Commission shall prevent any person from violating a rule, regulation, or order of the Commission under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such a rule, regulation, or order shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) EXEMPTION.—(1) No provision of this Act shall apply to any person exempt from the jurisdiction of the Commission under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)), and nothing in this Act shall be construed to vest the Commission, or the attorney general of any State or any person, with jurisdiction or authority over any person not otherwise subject to the jurisdiction or authority of the Commission.

(2)(A) No provision of this Act shall apply—

(i) to a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or investment company in connection with the offer, sale, or purchase of any security, or to an issuer in connection with the offer, sale, or purchase of any security which that issuer has issued, or to any investment adviser providing investment advice relating to any security; or

(ii) to the solicitation, acceptance, confirmation, or execution of orders for the entry into, purchase of, or sale of any contract, account, agreement, or transaction subject to the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.) by a person registered under the Commodity Exchange Act in order to engage in such activity, including as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or as a person associated with any such person.

(B) For purposes of subparagraph (A)(i)—

(1) the terms "broker", "dealer", "municipal securities dealer", "government securities broker", and "government securities dealer" have the meanings given them in section 3(a) (4), (5), (30), (43), and (44), respectively, of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5), (30), (43), and (44));

(2) the term "investment adviser" has the meaning given it in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(3) the term "investment company" has the meaning given it in section 3(a) of the In-

vestment Company Act of 1940 (15 U.S.C. 80a-3(a));

(4) the term "issuer" has the meaning given it in section 2(4) of the Securities Act of 1933 (15 U.S.C. 77b(4)); and

(5) the term "security" has the meaning given to it in section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)), section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)), and section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(36)).

LIFE CARE HOME STUDY

SEC. 13. (a) STUDY.—The Federal Trade Commission shall conduct a study of unfair or deceptive acts or practices in the life care home industry, including acts or practices engaged in by life care homes. Within 24 months after the date of enactment of this Act, the Commission shall report the findings and conclusions of the study to Congress. The Commission shall indicate in its report whether it intends to initiate a trade regulation rulemaking under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) respecting unfair or deceptive acts or practices in the life care home industry and the reasons for such determination.

(b) DEFINITIONS.—For purposes of subsection (a), the term—

(1) "life care home" includes the facility or facilities occupied, or planned to be occupied, by residents or prospective residents where a provider undertakes to provide living accommodations and services pursuant to a life care contract, regardless of whether such facilities are operated on a profit or nonprofit basis; and

(2) "life care contract" includes a contract between a resident and a provider to provide the resident, for the duration of such resident's life, living accommodations and related services in a life care home, including nursing care services, medical services, and other health-related services, which is conditioned upon the transfer of an entrance fee to the provider and which may be further conditioned upon the payment of periodic service fees.

SUNSET

SEC. 14. The provisions of sections 3, 4, and 5 shall cease to have force and effect on and after the date that is five years following the date of enactment of this Act.

Mr. FORD. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

NEW YORK CITY ZEBRA MUSSEL MONITORING ACT OF 1991

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 274, S. 36, relating to zebra mussel monitoring.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 36) entitled "New York City Zebra Mussel Monitoring Act of 1991."

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with amendments; as follows:

(The parts of the bill intended to be stricken are printed in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 36

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

SECTION 101. SHORT TITLE.

This title may be cited as the "New York City Zebra Mussel Monitoring Act".

SEC. 102. DEFINITIONS.

For the purposes of this Act:

(a) The term "Secretary" means the Assistant Secretary of the Army for Civil Works.

(b) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(c) The term "Zebra Mussel" means the species Dreissena polymorpha.

SEC. 103. FINDINGS.

The Congress finds that—

(1) New York City has operated a public water supply system since the late 1700's:

(2) the current water supply system supplies over 95 per centum of all water used in New York City, providing service to millions of residents;

(3) the water supply system obtains its water from three upstate reservoir systems: the Croton, Catskill, and Delaware systems, which include eighteen reservoirs and three controlled lakes;

(4) it is likely that within the coming two decades, the zebra mussel will have infested the entire surface water system of the United States and Canada and that this migration is irreversible and cannot be quarantined; and

(5) introduction of the zebra mussel into the New York City water supply system posses a unique public health threat to millions of citizens.

SEC. 104. PURPOSE.

The purpose of this Act is to establish a program of monitoring and technological development to prevent the introduction and subsequent infestation of Zebra Mussels into the New York City water supply system.

SEC. 105. MONITORING AND PREVENTION.

(a) The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the United States Fish and Wildlife Service, the Governor of the State of New York, and the Mayor of the City of New York, shall—

(1) develop a prevention monitoring program for zebra mussels throughout the New York City water supply system.

(2) develop appropriate zebra mussel prevention and removal technologies for the New York City water supply system; and

(3) provide technical assistance to the State of New York and the City of New York on alternative design and maintenance practices for the New York City water supply system in the event of zebra mussel infestation.

SEC. 106. COST SHARING.

The Secretary shall not initiate any monitoring, prevention, and or technical assistance project or program under section 105 until appropriate non-Federal interests agree, by contract, to contribute 25 per centum of the cost for such projects during the period of such projects.

SEC. [106] *107.* **AUTHORIZATION OF APPROPRIATIONS.**

(a) For the purposes of carrying out section 105 of this Act, there is authorized to be appropriated to the Secretary of the Army $2,000,000 for each fiscal years 1991, 1992, 1993, 1994, and 1995. Such sums shall remain available until expended.

AMENDMENT NO. 1461

(Purpose: To control certain exotic aquatic organisms)

Mr. FORD. Mr. President, on behalf of Senator GLENN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. GLENN, for himself, Mr. KASTEN, Mr. KOHL, Mr. LEVIN, and Mr. DIXON, proposes an amendment numbered 1461.

Mr. FORD. 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 section:

SEC. . EXOTIC AQUATIC ORGANISMS.

(a) IN GENERAL.—Section 1101(b) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711(b)) is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary, in consultation with the Task Force—

"(A) shall provide that the regulations issued under this subsection shall apply to vessels that carry ballast water and that, after operating on the waters beyond the exclusive economic zone, enter a United States port on the Hudson River where water is characterized as having a salinity less than 18 o/oo, and

"(B) may provide that such regulations apply to vessels operating in other rivers, canals, lakes, and waterways where discharge of ballast water could result in the introduction and spread of aquatic nuisance species into the Great Lakes."

"(b) SHIPPING STUDY.—Section 1102(a)(3) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(a)(3)) is amended by striking "other than" and inserting "including".

Mr. GLENN. Mr. President, I rise today to offer an amendment to S. 36, the New York City Zebra Mussel Monitoring Act. I am joined in offering this amendment by Senator KASTEN, and several others from the Senate Great Lakes Task Force, including Senators DIXON, KOHL, and LEVIN. This important amendment expands the geographic scope of the Nonindigenous Aquatic Nuisance Prevention Program contained in Public Law 101-646, the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990, to include additional freshwater conduits of exotic species into the Great Lakes.

Title I of the Public Law 101-646, signed into law last year, is a program to prevent exotic species from entering the Great Lakes. As you know, the zebra mussel provides an example of how devastating and destructive nonindigenous species can be. Since it initially established itself in the basin—probably around 5 years ago—the zebra mussel has spread to all five

Great Lakes. It has already wreaked havoc on the ecology and economy of certain portions of the region, including the Ohio shore of Lake Erie. This mollusk from Eastern Europe is crowding out native species of freshwater clams, and has changed the complexion of Great Lakes beaches. In addition, it is costing raw water users in the basin millions of dollars in removal and cleaning costs. Moreover, the zebra mussel is not going to stop with the Great Lakes. It threatens to spread to two-thirds of the Nation's fresh water.

While we manage the problem that is already here, let's prevent the next one from arising. The next nonindigenous invader could be even more destructive than the zebra mussel. Fortunately, prevention is possible. All that is needed to substantially reduce the probability of another infestation by a nonindigenous species is a minimal amount of ballast management by incoming ships, the leading vector of nonindigenous aquatic species.

The prevention program in Public Law 101-646 currently requires that any ship en route to a Great Lakes port from a point of origin outside the U.S. exclusive economic zone must exchange its ballast water in the high seas—with due regard for safety. At the time the bill was passed, it was believed that ships passing through the St. Lawrence Seaway to Great Lakes ports were the sole avenues of entry for nonindigenous hitch-hikers. However, current research shows that nine nonindigenous species have entered the Great Lakes from the Hudson River—via the Erie Canal. These species include such noxious pests as the sea lamprey, the white perch, and the alewife. As a result, ballast dumping at Hudson River ports such as Albany, as well as ports within other connecting freshwater systems, may also threaten the Great Lakes.

The Great Lakes Fishery Commission has recommended that the prevention program established in Public Law 101-646 to protect the Great Lakes be extended to include ships destined for ports on the Hudson River and other freshwater systems connected to the Great Lakes, as needed. The Coast Guard, which is the lead agency responsible for implementing the program, stated that it would need additional statutory authority to expand the geographic scope of its program.

My amendment requires that the Coast Guard extend its ballast management regulations to include ships destined for ports on the Hudson River, and provides statutory authority to the Coast Guard to further increase the geographic scope of the program as needed to protect the Great Lakes from nonindigenous invaders. It also requires that the shipping study required by Public Law 101-646 include an assessment of the need for ballast controls on vessels entering ports other than Great Lakes ports as a measure to protect the Great Lakes from unintentional introductions of these species.

I wish to thank my colleagues on the Senate Great Lakes Task Force, especially Senator MOYNIHAN and Senator KASTEN, for their support and involvement in this effort. Senator MOYNIHAN's continuing interest in aggressively managing the zebra mussel problem will greatly reduce the cost that infestations by nonindigenous species invariably impose. Senator KASTEN, a member of the Commerce Committee of the Senate, has been a key supporter of forward-thinking prevention efforts. I urge adoption of this amendment.

Mr. HOLLINGS. Mr. President, I rise today to discuss an amendment that is being offered to S. 36, the New York City Zebra Mussel Monitoring Act of 1991. I am speaking of the amendment sponsored by Senators GLENN, KASTEN, DIXON, KOHL, and LEVIN. As such, I would appreciate it if my good friend and chairman of the Committee on Environment and Public Works, Mr. BURDICK, would be willing to discuss the provision.

Mr. BURDICK. Mr. President, it would be a pleasure to discuss this matter with the Senator from South Carolina, the distinguished chairman of the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. I have carefully reviewed S. 36, the New York City Zebra Mussel Monitoring Act of 1991. The legislation directs the Army Corps of Engineers, in consultation with the Environmental Protection Agency and the city of New York, to develop zebra mussel monitoring and removal programs for the New York City water supply system. I congratulate the chairman for the committee's fine work on this important legislation.

Further, let me state that in reviewing the reported bill, I believe it is entirely within the jurisdiction of the Committee on Environment and Public Works. However, the amendment that Senator GLENN and others are offering addresses Coast Guard regulation of marine and ocean navigation and safety. As such, the amendment falls within the jurisdiction of the Committee on Commerce, Science, and Transportation. Nonetheless, I strongly support the provision and urge the chairman to accept it. It will strengthen the Nonindigenous Aquatic Nuisance Prevention and Control Act on which our committees worked last year.

Mr. BURDICK. I agree with the chairman of the Commerce, Science, and Transportation Committee regarding the jurisdictional matters and welcome his support of the legislation. I also support Senator GLENN's amendment and believe it should be adopted.

Mr. HOLLINGS. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1461) 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, was read the third time, and passed.

S. 36

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

SECTION 101. SHORT TITLE.

This title may be cited as the "New York City Zebra Mussel Monitoring Act".

SEC. 102. DEFINITIONS.

For the purposes of this Act:

(a) The term "Secretary" means the Assistant Secretary of the Army for Civil Works.

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(c) The term "Zebra Mussel" means the species Dreissena polymorpha.

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The Congress finds that—

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The purpose of this Act is to establish a program of monitoring and technological development to prevent the introduction and subsequent infestation of Zebra Mussels into the New York City water supply system.

SEC. 105. MONITORING AND PREVENTION.

(a) The Secretary, in consultation with the Administrator of the Environmental Protection Agency, the United States Fish and Wildlife Service, the Governor of the State of New York, and the Mayor of the City of New York, shall—

(1) develop a prevention monitoring program for zebra mussels throughout the New York City water supply system.

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(3) provide technical assistance to the State of New York and the City of New York on alternative design and maintenance practices for the New York City water supply system in the event of zebra mussel infestation.

SEC. 106. COST SHARING.

The Secretary shall not initiate any monitoring, prevention, and or technical assistance project or program under section 105 until . appropriate non-Federal interests agree, by contract, to contribute 25 per centum of the cost for such projects during the period of such projects.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

(a) For the purposes of carrying out section 105 of this Act, there is authorized to be appropriated to the Secretary of the Army $2,000,000 for each fiscal years 1991, 1992, 1993, 1994, and 1995. Such sums shall remain available until expended.

SEC. 108. EXOTIC AQUATIC ORGANISMS.

(a) IN GENERAL.—Section 1101(b) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711(b)) is amended by adding at the end thereof the following new paragraph:

"(3) The Secretary, in consultation with the Task Force—

"(A) shall provide that the regulations issued under this subsection shall apply to vessels that carry ballast water and that, after operating on the waters beyond the exclusive economic zone, enter a United States port on the Hudson River where water is characterized as having a salinity less than 18 o/oo, and

"(B) may provide that such regulations apply to vessels operating in other rivers, canals, lakes, and waterways where discharge of ballast water could result in the introduction and spread of aquatic nuisance species into the Great Lakes."

(b) SHIPPING STUDY.—Section 1102(a)(3) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(a)(3)) is amended by striking "other than" and inserting "including."

Mr. FORD. I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

NEZ PERCE HISTORICAL PARK

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 2032 regarding the Nez Perce Historical Park and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2032) to amend the act of 1965 authorizing historic park in the State of Idaho, 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.

AMENDMENT NO. 1462

Mr. FORD. Mr. President on behalf of Senators BUMPERS and CRAIG, 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 Kentucky [Mr. FORD], for Mr. BUMPERS, for himself and Mr. CRAIG, proposes an amendment numbered 1462.

Mr. FORD. 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 26, strike "and".

On page 3, line 1, strike "Montana;" and insert in lieu thereof: "Montana; and (13) Hasotino Village, Idaho;".

On page 3, lines 12 through 25, strike paragraph (3) in its entirety and insert in lieu thereof:

"(3) In section 3, strike the proviso in the first sentence and insert in lieu thereof, ": Provided, That lands or interests therein owned by a State or a political subdivision of a State may be acquired only by donation or exchange: Provided further, That with respect to sites designated as components of the Nez Perce National Historical Park after November 1, 1991, no lands or interests therein, or other property, may be acquired without the consent of the owner thereof.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1462) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 2032), as amended, was passed.

Mr. FORD. I move to reconsider the vote by which the bill as amended, was passed.

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

The motion to lay on the table was agreed to.

TELEPHONE CONSUMER PROTECTION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1462.

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

Resolved, That the bill from the Senate (S. 1462) entitled "An Act to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment", do pass with the following amendment: Strike out all after the enacting clause, and insert:

S. 1462

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Consumer Protection Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that:

(1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.

(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.

(3) More than 300,000 solicitors call more than 18,000,000 Americans every day.

(4) Total United States sales generated through telemarketing amounted to $435,000,000,000 in 1990, a more than four-fold increase since 1984.

(5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

(6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.

(7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.

(8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.

(9) Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

(10) Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

(11) Technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.

(12) Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

(13) While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.

(14) Businesses also have complained to the Congress and the Federal Communications Commission that automated or prerecorded telephone calls are a nuisance, are an invasion of privacy, and interfere with interstate commerce.

(15) The Federal Communications Commission should consider adopting reasonable restrictions on automated or prerecorded calls to businesses as well as to the home, consistent with the constitutional protections of free speech.

SEC. 3. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

(a) AMENDMENT.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 227. RESTRICTIONS ON THE USE OF TELEPHONE EQUIPMENT.

"(a) DEFINITIONS.—As used in this section—

"(1) The term 'automatic telephone dialing system' means equipment which has the capacity—

"(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

"(B) to dial such numbers.

"(2) The term 'telephone facsimile machine' means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

"(3) The term 'telephone solicitation' means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

"(4) The term 'unsolicited advertisement' means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

"(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

"(1) PROHIBITIONS.—It shall be unlawful for any person within the United States—

"(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

"(i) to any emergency telephone line (including any '911' line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

"(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

"(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

"(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

"(C) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or

"(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

"(2) REGULATIONS; EXEMPTIONS AND OTHER PROVISIONS.—The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

"(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent; and

"(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

"(i) calls that are not made for a commercial purpose; and

"(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

"(I) will not adversely affect the privacy rights that this section is intended to protect; and

"(II) do not include the transmission of any unsolicited advertisement.

"(3) PRIVATE RIGHT OF ACTION.—A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

"(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

"(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or

"(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

"(c) PROTECTION OF SUBSCRIBER PRIVACY RIGHTS.—

"(1) RULEMAKING PROCEEDING REQUIRED.—Within 120 days after the date of enactment of this section, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

"(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific 'do not call' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

"(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

"(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

"(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

"(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

"(2) REGULATIONS.—Not later than 9 months after the date of enactment of this section, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

"(3) USE OF DATABASE PERMITTED.—The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall—

"(A) specify a method by which the Commission will select an entity to administer such database;

"(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

"(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

"(D) specify the methods by which such objections shall be collected and added to the database;

"(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

"(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

"(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

"(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

"(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

"(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

"(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

"(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

"(4) CONSIDERATIONS REQUIRED FOR USE OF DATABASE METHOD.—If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

"(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

"(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

"(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

"(ii) reflect the relative costs of providing such lists on paper or electronic media; and

"(iii) not place an unreasonable financial burden on small businesses; and

"(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

"(5) PRIVATE RIGHT OF ACTION.—A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

"(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

"(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater, or

"(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

"(6) RELATION TO SUBSECTION (B).—The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b).

"(d) TECHNICAL AND PROCEDURAL STANDARDS.—

"(1) PROHIBITION.—It shall be unlawful for any person within the United States—

"(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

"(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

"(2) TELEPHONE FACSIMILE MACHINES.—The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after the date of enactment of this section clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

"(3) ARTIFICIAL OR PRERECORDED VOICE SYSTEMS.—The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

"(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

"(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

"(e) EFFECT ON STATE LAW.—

"(1) STATE LAW NOT PREEMPTED.—Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

"(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

"(B) the use of automatic telephone dialing systems;

"(C) the use of artificial or prerecorded voice messages; or

"(D) the making of telephone solicitations.

"(2) STATE USE OF DATABASES.—If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national datebase that relates to such State.

"(f) ACTIONS BY STATES.—

"(1) AUTHORITY OF STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

"(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

"(3) RIGHTS OF COMMISSION.—The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

"(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

"(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

"(6) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

"(7) LIMITATION.—Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

"(8) DEFINITION.—As used in this subsection, the term 'attorney general' means the chief legal officer of a State.".

(b) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by striking "Except as provided" and all that follows through "and subject to the provisions" and inserting "Except as provided in sections 223 through 227, inclusive, and subject to the provisions".

(c) DEADLINE FOR REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—The Federal Communications Commission shall prescribe regulations to implement the amendments made by this section not later than 9 months after the date of enactment of this Act.

(2) EFFECTIVE DATE.—The requirements of section 228 of the Communications Act of 1934 (as added by this section), other than the authority to prescribe regulations, shall take effect one year after the date of enactment of this Act.

SEC. 4. AM RADIO SERVICE.

Section 331 of the Communications Act of 1934 is amended—

(1) in the heading of such section, by inserting "AND AM RADIO STATIONS" after "TELEVISION STATIONS";

(2) by inserting "(a) VERY HIGH FREQUENCY STATIONS.—" after "SEC. 331."; and

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

"(b) AM RADIO STATIONS.—It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible. The Commission shall report to the appropriate committees of Congress within 30 days after the date of enactment of this Act on how it intends to meet this policy goal.".

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. HOLLINGS. Mr. President, I am pleased to report that we have come to an agreement with the House on a bill to restrict invasive uses of telephone equipment. The amendment version before the Senate today of S. 1462, which I introduced earlier this year, is the result of negotiations with the industry and Members on both sides of the aisle in the House and the Senate. This amendment incorporates the principal provisions of S. 1462 and S. 1410, which passed the Senate on November 7, and H.R. 1304, which passed the House on November 18. I believe that this revised bill responds to all the major concerns of the parties involved, and I urge my colleagues to support it.

The bill includes provisions to restrict telephone calls that use an automated or computerized voice. These calls are a nuisance and an invasion of our privacy. The complaints received by the Federal Communications Commission [FCC] and my office indicate that people find these calls to be objectionable regardless of the content of the message or the initiator of the call. Restricting such calls is constitutionally acceptable as a reasonable place and manner restriction.

At the same time, there may be certain types of automated or prerecorded calls that are not as invasive of privacy rights as others. I use the term privacy rights to include the concepts of privacy invasion and nuisance. Therefore, this bill includes a provision that allows those who use automated or prerecorded voice systems to apply to the FCC for an exemption from this prohibition. The bill gives the FCC the authority to exempt from these restrictions calls that are not made for a commercial purpose and categories of calls that the FCC finds do not invade privacy rights. If the FCC determines that such an exemption is warranted based on the record it develops, the FCC may grant such an exemption, subject to whatever conditions it determines to be appropriate.

The phrase "calls that are not made for a commercial purpose" is intended in the constitutional sense and is intended to be consistent with the court decisions which recognize that noncommercial speech can receive less protection than commercial speech. This phrase is intended to allow the FCC to design rules to implement this bill that are consistent with the free speech guarantees of the Constitution if it finds that a distinction between commercial and noncommercial calls is justified and can be supported by the record.

The FCC is given the authority to exempt certain types of calls, and the FCC is not limited to considering existing technologies. The FCC is given the flexibilty to consider what rules should apply to future technologies as well as existing technologies.

Some telephone companies are beginning to offer a voice messaging service which delivers personal messages to one or more persons. A person calling from a pay telephone at an airport, for instance, may call and leave a recorded message to be delivered later if the called line is busy or no one answers the call. Some debt collection agencies also use automated or prerecorded messages to notify consumers of outstanding bills. The FCC should consider whether these types of prerecorded calls should be exempted and under what conditions such an exemption should be granted either as a noncommercial call or as a category of calls that does not invade the privacy rights of consumers.

In considering whether to exempt certain calls, however, the bill states that the FCC may not exempt telephone solicitations. These calls are certainly commercial calls and the evidence before the Congress leaves no doubt that these types of calls are an invasion of privacy and a nuisance.

As stated earlier, this bill prohibits automated or prerecorded telephone calls to the home, unless the called party consents to receiving such a call, or unless the call is initiated for emergency purposes. The FCC must determine what constitutes an emergency purpose. In defining this term the FCC could find that "emergency purpose" includes any automated telephone call that notifies consumers of impending or current power outages, whether these outages are for scheduled maintenance, unscheduled outages caused by storms or similar circumstances, cut off of power due to late payment of bills, power interruptions for load management programs, or other reasons. Power interruptions can be detrimental to the public health and safety. Therefore, the FCC should consider whether all or certain types of outages should be considered an emergency.

Section 227(e)(1) clarifies that the bill is not intended to preempt State authority regarding intrastate communications except with respect to the technical standards under section 227(d) and subject to section 227(e)(2). Pursuant to the general preemptive effect of the Communications Act of 1934, State regulation of interstate communications, including interstate communications initiated for telemarketing purposes, is preempted.

I want to clarify a couple of other changes to the bill that we have made in response to some concerns of the telemarketing industry. We have included a private right of action for consumers harmed by authomated or prerecorded calls and a different private right of action for consumers who receive telemarketing solicitations. We have amended this provision in order to give telemarketers an affirmative defense in court so that this provision does not impose strict liability on any telemarketer that might violate the provisions of the bill.

Finally, I want to clarify how this bill applies to carriers who might unknowingly transmit calls made in violation of this bill. It is not our intention that a carrier should be held liable for transmitting over the carrier's network any call or message in violation of this legislation made by an entity other than the carrier. This intention is consistent with our policy that carriers should not be responsible for the content of messages delivered over their networks. If carriers were held responsible for such transmissions, they might be forced to monitor telephone conversations, which would not be in the public interest. To the extent carriers are responsible for initiating or placing telephone calls or messages, however, they must comply with the terms of this bill.

I thank my counterparts on the House side, Chairman DINGELL of the House Energy and Commerce Committee, Chairman MARKEY of the House Telecommunications and Finance Subcommittee, and the ranking minority member of the Telecommunications and Finance Subcommittee, Mr. RINALDO. I also recognize the efforts of Senator DANFORTH, the ranking member on the Senate Commerce Committee, Senator INOUYE, chairman of the Senate Communications Committee, and Senator PRESSLER, the author of S. 1410, in assisting in the development of this compromise. I am pleased that we were able to accommodate the interests of all Members in a bipartisan way.

TELEMARKETING

Mr. PRESSLER. Mr. President, I support Senate passage of S. 1462. This legislation is the result of a House and

Senate conference on comprehensive telemarketing legislation. It incorporates legislation Congressman MARKEY introduced in the House of Representatives and I introduced earlier this year in the Senate, and legislation introduced by Senator HOLLINGS. S. 1462 contains the provisions I first suggested in S. 1410, which passed the Senate earlier this year. I introduced this legislation in response to the national outcry over the explosion of unsolicited telephone advertising. I want to thank Chairman HOLLINGS and Chairman MARKEY for their efforts both to forge an agreement on our three bills.

Mr. President, consumers in my home State of South Dakota are fed up with the annoyance of unwanted telephone solicitations. Unlike other communications media, the telephone commands our instant attention. Junk mail can be thrown away. Television commercials can be turned off. The telephone demands to be answered.

People are increasingly upset over this invasion of their privacy by unrestricted telemarketing. In fact, the consumer backlash that has arisen from the cost and the interference of unsolicited telemarketing calls has sparked the introduction of over 1,000 bills in State legislatures around the country seeking to limit this abuse. The complaints of consumers have been heard.

This past June, we held hearings in the Commerce, Science, and Transportation Committee on S. 1410. During these hearings, we received testimony from consumer advocates, private citizens, and representatives of the telemarketing industry. The testimony we received was clear. The Federal Government needs to act now on uniform legislation to protect consumers.

The primary purpose of this legislation is to develop the necessary ground rules for cost-effective protection of consumers from unwanted telephone solicitations. These rules should allow responsible telemarketers to reach consumers who are most responsive to this form of solicitation, while eliminating the cost and time of contacting those individuals who would be least responsive.

To accomplish this balanced approach, the substitute we have before us today directs the FCC to prescribe regulations to protect the privacy rights of consumers from the intrusion of unsolicited telephone marketing calls. One such proposal the FCC would consider is the use of a telephone electronic database that would allow consumers to have their phone numbers protected from unsolicited advertising. This type of consumer protection has already been used with great success in the State of Florida. Another proposal the FCC would examine is the placement of all telemarketers on a single exchange, thus allowing consumers to block calls from that exchange.

Some objected to the original legislation because of the extent to which it outlined the safeguards necessary for the creation of a national database. While I personally believe that an electronic database will give the most promising protection for consumers, we recognize that newer technologies could be used more effectively in the future. It is important to note that certain anticompetitive questions may arise as a result of the form of protection the FCC chooses. For this reason, it is important for the FCC to keep a close watch on the impact of its rulemaking on businesses that compete with larger monopolies.

We included in this substitute a provision that directs the FCC to examine whether local telephone solicitations by small businesses and second-class mail permit holders should be subject to the same FCC regulations that would apply to all other telemarketers. Many small businesses conduct responsible telemarketing in the local areas they serve. Since their business depends upon their good standing in the community, they conduct their own telemarketing in a very respectable way.

We include in this bill an exemption for businesses that have an established business relationship with their customers. For example, if Citibank's credit card operation needed to inform customers about new services it intended to provide to their credit card customer, clearly this contact would be allowed.

The effect of this legislation will be to prohibit cold calls by any telemarketer to the telephone of a consumer who has no connection or affiliation with that business and who affirmatively has taken action to prevent such calls. Many responsible telemarketers have told me that this will save them both time and money by reaching only those people who are most likely to respond positively to their solicitations.

S. 1462 also addresses problems arising from computerized calls. Due to advances in auto-dialer technology, machines can be programmed to deliver a prerecorded message to thousands of sequential phone numbers.

This results in calls to hospitals, emergency care providers, unlisted numbers, and paging and cellular equipment. There have been many instances of auto-dial machines hitting hospital switchboards and sequentially delivering a recorded message to all telephone lines. In some cases, the calling machine does not release the called party's line until the recorded message has ended. This renders the called party's phones inoperable. In an emergency situation, this can create a real hazard.

To remedy this situation, the substitute requires auto-dialer machines to release the phone line automatically after the called party hangs up. In addition, it requires all prerecorded messages to clearly identify the name, phone number or address of the person or business initiating the call.

This bill also allows hospitals, police stations, fire stations, and owners of paging and cellular equipment to eliminate all unsolicited calls.

The growth of facsimile machines in the workplace has brought another form of unsolicited advertising—the junk fax. Unsolicited facsimile advertising ties up fax machines and uses the called party's fax paper. This costs the recipient both time and money. The substitute bill requires that autodial fax machines clearly mark on all transmissions the date and time of transmission, the identity of the sender, and the telephone number of the sending machine.

While our substitute will not end all unsolicited calls, it will give back to consumers the freedom to choose how their telephones are used. The balanced approach we take in the Pressler-Markey-Hollings legislation, will finally give consumers relief from modern door-to-door salesmen who now have the unrestricted ability to invade the privacy of our homes at any time.

Mr. President, I ask unanimous consent that several articles in support of this legislation be placed in the RECORD immediately following my remarks.

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

[From the Chicago Tribune, Nov. 22, 1991]

PUTTING LIMITS ON AUTODIALERS

Ever had a pleasant diner interrupted by a telephone call, only to hear a tape-recorded voice greet you with an offer of something to buy? Then you may think there is nothing but good in congressional efforts to put a stop to such annoyances.

That reaction is perfectly understandable but but not entirely wise. Autodialers may not be to everyone's liking, but they have value to some buyers and sellers—otherwise, they would vanish on their own. Fortunately, there are ways to deal with the aggravations and abuses without barring the machines altogether.

Autodialers have grown in use because, as a New York Times story put it, "they don't eat, they don't sleep and their feelings never get hurt when people curse them or hang up on them. They just call and call and call—each one up to 1,500 times a day."

By one estimate, these gadgets make 20 million calls a day in the United States, flogging a wide variety of goods and services. Most consumers, no doubt, hang up within seconds, if not milliseconds, but enough stay on the line to listen—and buy—that many companies wouldn't think of doing business without them.

They create problems beyond the interrupted meal. They can tie up phone lines, even after victims hang up, overwhelm electronic paging services and inflict unwanted expenses on cellular phone owners, who pay for incoming as well as outgoing calls.

The Senate recently passed two measures dealing with autodialers—one good and one bad. The good one, sponsored by Larry Pres-

sler (R-S.D), directs the Federal Communications Commission to either let consumers shield themselves by registering their numbers or to put the autodialers all on one exchange, enabling consumers to block their calls. The bad one, offered by Ernest Hollings (D.-D.C.) bans autodialers from calling either fax machines or homes.

Hollings' blunderbuss approach would not only penalize businesses and consumers that benefit from autodialers, but probably run afoul of the Constitution as well. The 1st Amendment protects the freedom to speak—even by phone and even by recording. If Congress can't outlaw indecent messages provided by "phone sex" services—as the supreme Court has ruled—it presumably has to be careful with broad prohibitions on the delivery of messages by autodialer.

A better approach is to zero in on clear abuses. A House bill wouild ban calls to emergency lines of health care facilities, police and fire departments. It would put pagers and cellular phones off limits. And autodialers would be required to disconnect after the person called hangs up—someting not all do now.

Lawmakers should keep in mind that while recorded solicitations may be annoying to most consumers, they perform a valued function for some. It isn't too much to ask that Congress, in trying to protect the former, should also accommodate the interest of the latter.

[From the Washington Post, Nov. 19, 1991]

HOUSE VOTES TO RESTRICT CALLS BY TELEMARKETERS

(By Cindy Skrzycki)

The House of Representatives yesterday passed legislation to restrict telemarketers who dial some 38 million Americans every day with unsolicited commercial telephone calls, selling credit cards, aluminum siding, children's photographs and uncounted other products.

The bill, which passed by a voice vote, has to be reconciled with two initiatives approved by the Senate that also take aim primarily at auto-dialers, which are computers that spew prerecorded messages. Differences in the bills should be ironed out by the end of the week, said a staff member on the House telecommunications and finance subcommittee.

Once a compromise reaches the White House, however, its fate is less certain. The Bush administration has raised objections to taking away or regulating one of business's most potent and economical marketing tools.

Nevertheless, the issue of blocking unsolicited sales calls generated by humans, computerized machines or facsimile machines isn't likely to go away as millions of Americans find their dinner hours interrupted by telephone sales calls, sometimes from machines that refuse to free the line.

"When people get home from work, they deserve some peace and quiet," said Rep. Edward J. Markey (D-Mass.), sponsor of the House bill and chairman of the subcommittee on telecommunications and finance.

The House bill attempts to balance the privacy rights of individuals against the rights of businesses that may using telemarketing not to solicit but to reach customers to warn of an electrical power test or a delinquent loan.

The Senate bill, sponsored by Sen. Ernest Hollings (D-S.C.), proposes to ban all computerized calls to the home unless the party consents to receiving them. In contrast, Markey's bill would charge the Federal Communications Commission with coming up with a way to protect consumers from commercial solicitations.

The House bill does allow businesses with established relationships to call even if a name shows up on an industry "do-not-call list." Contact would stop if the consumer objected again to being called.

The House bill prescribes additional restrictions for auto-dialers: The machines would have to identify themselves and hang up as soon as possible. They would not be allowed to call emergency phone lines, or mobile or cellular phones.

Also, the House bill requires faxes used for advertising to include the identity and telephone number of the faxer. It also asks the FCC to include the identity and telephone number of the faxer. It also asks the FCC to consider banning "junk faxes."

The Hollings bill places an outright ban on unsolicited faxes unless there has been some prior consent from the consumer.

Under the Markey bill, the FCC would have about a year to explore the best way to protect the privacy of residential telephone subscribers, an approach that is also suggested by Sen. Larry Pressler (R-S.D.) in a bill that passed the Senate earlier this month.

Some of the alternatives the FCC might consider include a national electronic database of people who do not want to be called, the use of new telephone technology to block such calls, or special markings such as an asterisk in the telephone book.

Studies done by telephone companies and other organizations show that automated telemarketing, which has grown into an industry that generates $435 billion in sales, is a growing irritant to Americans who feel the telephone is invading their privacy.

[From the New York Times, Nov. 8, 1991]

SENATE VOTES DIALER BAN

WASHINGTON, NOV. 7.—The Senate unanimously approved bills today that would virtually ban the use of automated dialing machines in telephone marketing and would make it easier to block unwanted calls by live sales representatives.

The first measure, sponsored by Senator Ernest F. Hollings, Democrat of South Carolina, would make it illegal to use machines that automatically call homes and play recorded sales pitches, unless a person has given specific written or spoken permission.

A second measure, sponsored by Senator Larry Pressler, Republican of South Dakota, would instruct the Federal Communications Commission to adopt rules to help people block both live and computer-delivered sales calls.

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

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

The motion to lay on the table was agreed to.

CENTENNIAL OF BASKETBALL

BICENTENNIAL OF DC

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to, en bloc, the immediate consideration of House Joint Resolution 372, House Joint Resolution 356, just received from the House; that the joint resolutions be deemed read three times; passed en bloc; that the motion to reconsider be laid upon the table; that the consideration of these items appear individually in the RECORD.

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

The joint resolutions were deemed read three times and passed as follows:

A joint resolution (H.J. Res. 372) designating December 21, 1991, as "Basketball Centennial Day".

A joint resolution (H.J. Res. 356) designating December 1991 as "Bicentennial of the District of Columbia Month".

CAPITOL PRESERVATION COMMISSION

Mr. FORD. Mr. President, on behalf of Senator BYRD, I send to the desk a resolution, and ask for its immediate consideration, that the resolution be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 240) is as follows:

Resolved, That paragraph 1 of Rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol be temporarily suspended for the sole and specific purpose of permitting the United States Capitol Preservation Commission and its designated agents to conduct activities in accordance with the purposes of the Commission on such dates and times, and in such manner as determined by the Senate Co-chair of the Commission or his designee.

SEC. 2. The Sergeant at Arms of the Senate is authorized and directed to make the necessary arrangements to facilitate activities authorized by this resolution.

STAR PRINT OF REPORT NO. 102-213

Mr. FORD. Mr. President, I ask unanimous consent for a star print of the report of No. 102-213, the Select Committee on Indian Affairs on S. 1595.

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

STAR PRINT OF ETHICS REPORT

Mr. FORD. Mr. President, I ask unanimous consent that there be a star print of the Ethics Committee report regarding Senator CRANSTON to reflect the changes I now send to the desk, and ask that a letter accompanying this by Annette M. Gillis be printed in the RECORD.

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

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

U.S. SENATE,
SELECT COMMITTEE ON ETHICS,
Washington, DC, November 26, 1991.

MS. KATHLEEN ALVAREZ,
Bill Clerk, Office of the Secretary,
U.S. Senate, Washington, DC.

DEAR KATHIE: As a follow up to our telephone conversation of yesterday regarding

Senate Report 102-223 (Investigation of Senator Alan Cranston), the Committee, respectfully, request that the publication be reprinted and include the listed modifications.

1. Volumes I and II of the Committee Report should be combined and printed as one Senate report. Please do not repaginate the old Volume 2.

2. The cover contain the Together With Additional Views language as stated on the cover of the Committee's submission.

3. The Committee would like to add its Members names to the bottom of page 36 as follows.

Howell Heflin, Chairman, Warren B. Rudman, Vice Chairman, David Pryor, Member, Trent Lott, Member, Terry Sanford, Member.

4. Remove the third and fourth heading (the whole heading should be removed) lines from Volume 2. (This is Senator Helms' report which was credited to Senator Heflin when it was printed.)

5. Insert the attached cover page ahead of page one of Volume 2.

Thank you for your attention regarding this matter.

Sincerely,

ANNETTE M. GILLIS,
Chief Clerk.

COAST GUARD AUTHORIZATION ACT OF 1991

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1776.

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

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1776) entitled "An Act to authorize for fiscal year 1992 the United States Coast Guard Budget" with the following amendment:

In lieu of the matter proposed to be inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coast Guard Authorization Act of 1991".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for Fiscal Year 1992, as follows:

(a) For the operation and maintenance of the Coast Guard, $2,570,000,000, of which $500,000 shall be used to implement the Nonindigeous Aquatic Nuisance Prevention and Control Act of 1990, (P.L. 101-646), and $35,000,000 shall be expended from the Boat Safety Account.

(b)(1) For the acquisition, construction, rebuilding and improvement of aids to navigation, shore and offshore facilities, vessels, sonar simulators, and aircraft, including equipment related thereto, $466,000,000, of which $29,000,000 shall be used to acquire a command and control aircraft, to remain available until expended.

(2) Funds authorized to be appropriated for the construction of a 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.

(3)(A) Notwithstanding another provision of law, the Secretary of the Department in which the Coast Guard is operating may submit a request for reprogramming of funds 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 those reprogramming procedures—

(i) the Coast Guard may enter into a multiyear lease agreement for a replacement aircraft and may utilize operating expenses for a multiyear lease but not for the purchase of aircraft; and

(ii) funds may be reprogrammed, pursuant to the request, from any subaccount of the acquisition, construction, and improvements appropriation.

(B) The Coast Guard may transfer the current command and control aircraft to the vendor of a 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 a purchase, lease, or lease with option to purchase.

(4) Before October 1, 1992, the Secretary of Transportation shall use funds as may be necessary, not more than $14,000,000, to begin and actively pursue the renovation project to extend the useful life of the Coast Guard Cutter MACKINAW at least an additional 15 years.

(c) For research, development, test, and evaluation, $29,150,000, to remain available until expended.

(d) 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.

(e) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, $11,100,000, to remain available until expended.

(e) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, $11,100,000, to remain available until expended.

(f) For environmental compliance and restoration at Coast Guard facilities, $25,100,000, to remain available until expended.

(g) Of the amounts authorized for Coast Guard operations and maintenance and acquisition construction and improvement, the following amounts shall be derived from transfer from the Oil Spill Liability Fund for implementation of the Oil Pollution Act of 1990 (P.L. 101-380; 104 Stat. 484):

(1) $25,000,000 for operating expenses; and

(2) $30,000,000 to establiish the National Response System under section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)), including the purchase and prepositioning of oil spill removal equipment.

(h) Of the amounts authorized for Coast Guard operations and maintenance, 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).

SEC. 3. AUTHORIZED LEVELS OF MILITARY STRENGTH AND MILITARY TRAINING FOR FISCAL YEAR 1992.

(a) 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) 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.

SEC. 4. TRANSFER OF AUTHORITY FROM THE SECRETARY OF TRANSPORTATION TO THE SECRETARY OF THE NAVY UPON THE TRANSFER OF THE COAST GUARD TO THE NAVY.

Not later than 90 days after enactment of this Act, the Secretary of Transportation shall submit to Congress a report on the functions, powers, and duties vested in the Secretary of Transportation and exercised through delegation to the Commandant of the Coast Guard that would be transferred to the Secretary of the Navy when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

SEC. 5. RETIREMENT OF REAR ADMIRALS.

(a) Section 290 of title 14, United States Code, is amended—

(1) in subsection (e) by striking "June 30 of" and substituting "July 1 of the promotion year immediately following"; and

(2) by striking subsections (f) and (g) and substituting the following new subsections:

"(f)(1) Unless retired under another provision of law, each officer who is continued on active duty under this section shall, execpt as provided in paragraph (2), be retire 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 or 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 another 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 another 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 another 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)(1) Section 290(a) of title 14, United States Code, is amended by striking "he" and substituting "that officer".

(2) Section 290(d) of title 14, United States Code, is amended by striking "his" each place it appears.

SEC. 6. ENLISTED PERSONNEL BOARDS.

(a) Section 357 of title 14, United States Code, is amended to read as follows:

"(a) Enlisted Personnel Boards shall be convened as the Commandant may prescribe to review the records of enlisted members who have twenty or more years of active military service.

"(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 on recommendtion of a Board—

"(1) because the member's performance is below the standards the Commandant prescribes; or

"(2) because of professional dereliction.

"(c) An enlisted member under review by the Board shall be—

"(1) notified in writing of the reasons the member is being considered for involuntary retirement;

"(2) allowed sixty days from the date on which counsel is provided under paragraph (3) to submit any matters in rebuttal;

"(3) provided counsel, certified under section 827(b) of title 10, to help prepare the rebuttal submitted under paragraph (2) and to represent the member before the Board under paragraph (5);

"(4) allowed full access to and be furnished with copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted under paragraph (2); and

"(5) allowed to appear before the Board and present witnesses or other documentation related to the review.

"(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—

"(1) have twenty or more years of active service;

"(2) have been considered for involuntary retirement; and

"(3) it determines should be involuntarily retired.

"(f) After the Board makes its determination, each enlisted member the Commandant considers for involuntary retirement shall be—

"(1) notified by certified mail of the reasons the member is being considered for involuntary retirement;

"(2) allowed sixty from the date counsel is provided under paragraph (3) to submit any matters in rebuttal;

"(3) provided counsel, certified under section 827(b) of title 10, to help prepare the rebuttal submitted under paragraph (2); and

"(4) allowed full access to and be furnished with copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted under paragraph (2).

"(g) If the Commandant approves the Board's recommendation, the enlisted member shall be notified of the Commandant's decision and shall be retired from the service within 90 days of the notification.

"(h) An enlisted member, who has completed twenty years' service and who the Commandant has involuntarily retired under this section, shall receive retired pay.

"(i) An enlisted member voluntarily or involuntarily retired after twenty years' service who was cited for extraordinary heroism in the line of duty shall be entitled to an increase in retired pay. The retired pay shall be increased by 10 percent of—

"(1) the active-duty pay and permanent additions thereto of the grade or rating with which retired when the member's retired pay is computed under section 423(a) of this title; or

"(2) the member's retired pay base under section 1407 of title 10, when a member's retired pay is computed under section 423(b) of this title.

"(j) When the Secretary orders a reduction in force, enlisted personnel may be involuntarily separated from the service without the Board's action.".

(b) The catchline to section 357 of title 14, United States Code, is amended to read "357. Involuntary retirement of enlisted members.", and item 357 in the analysis to chapter 11 of title 14, United States Code, is amended to read "357. Involuntary retirement of enlisted members.".

SEC. 7. AUTHORITY TO ACCEPT COURT-ORDERED COMMUNITY SERVICE.

Section 93 of title 14, United States Code, is amended by—

(1) striking the word "and" at the end of subsection (q);

(2) striking the period at the end of subsection (r) and inserting "; and"; and

(3) adding the following new subsection:

"(s) accept, under terms and conditions the Commandant establishes, the service of an individual ordered to perform community service under the order of a Federal, State, or municipal court.".

SEC. 8. HOUSING UNIT LEASE AUTHORITY.

(a)(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) 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 the Massachusetts Military Reservation.

SEC. 9. AIR FACILITIES LEASE AUTHORITY.

(a)(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) 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.

SEC. 10. COAST GUARD HOUSING STUDY.

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.

SEC. 11. TWO-YEAR BUDGET CYCLE FOR THE COAST GUARD.

Notwithstanding another law, the President is not required to submit a two-year budget request for the Coast Guard until the President is required to submit a two-year budget request for the Department of Transportation.

SEC. 12. TRANSPORTATION OF HOUSEHOLD EFFECTS OF COAST GUARD CADETS.

Section 406(b)(2)(E) of title 17, United States Code, is amended to read as follows:

"(E) Under regulations prescribed by the Secretary of Defense, or the Secretary of Transportation for the Coast Guard when it is not operating as a service in the Navy, cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy, and midshipmen at the United States Naval Academy shall be entitled, in connection with temporary or permanent station change, to transportation of baggage and household effects as provided in subparagraph (A) of this paragraph. The weight allowance for cadets and midshipmen is 350 pounds.".

SEC. 13. EMERGENCY RECALL OF RESERVISTS.

Section 712(a) of title 14, United States Code, is amended to read as follows:

"(a) Notwithstanding another law, and for the emergency augmentation of the Regular Coast Guard forces during a 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 an organized training unit of the Coast Guard Ready Reserve, a member thereof, or a member not assigned to a unit organized to serve as a unit.".

SEC. 14. RECALL OF RETIRED OFFICERS.

(a) Section 332(b) of title 14, United States Code, is amended by striking "1" and substituting "2".

(b) Section 332(a) of title 14, United States Code, is amended by striking "his" and substituting "that officer's" and by striking "he" and substituting "that officer".

SEC. 15. COAST GUARD ACADEMY ADVISORY COMMITTEE TERMINATION DATE.

Section 193 of title 14, United States Code, is amended by striking at the end "September 30, 1992", and inserting "September 30, 1994".

SEC. 16. AMENDMENT TO THE VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE ACT OF 1971.

Section 4(a)(1) of the Vessel Bridge-to-Bridge Radiotelephone Act of 1971 (33 U.S.C. 1203(a)(1)) is amended to read as follows:

"(1) every power-driven vessel of twenty meters or over in length while navigating;".

SEC. 17. NORTH CAROLINA MARITIME MUSEUM.

Notwithstanding section 3301(8) of title 46, United States Code, the GENERAL GREENE, (vessel identification number USG NP5000025661), may transport not more than 16 passengers when the North Carolina Maritime Museum operates the vessel for educational purposes.

SEC. 18. HOUSTON-GALVESTON NAVIGATION SAFETY ADVISORY COMMITTEE.

(a)(1) There is established a Houston-Galveston Navigation Safety Advisory Commit-

tee (hereinafter referred to as the "Committee"). The Committee shall advice, consult with, and make recommendations to the Secretary of the department in which the Coast Guard is operating (hereinafter in this part referred to as the "Secretary") on matters relating to the transit of vessels and products to and from the Ports of Galveston, Houston, Texas City, and Galveston Bay. The Secretary shall, whenever practicable, consult with the Committee before taking any significant action related to navigation safety at these port facilities. Any advice or recommendation made by the Committee to the Secretary shall reflect the independent judgment of the Committee on the matter concerned.

(2) The Committee is authorized to make available to Congress any information, advice, and recommendations that the Committee is authorized to give to the Secretary. The Committee shall meet at the call of the Secretary, but in any event not less than once during each calendar year. All matters relating to or proceedings of the Committee shall comply with the Federal Advisory Committee Act (5 App. U.S.C.).

(B) The Committee shall consist of 18 members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the inshore and the offshore waters of the Gulf of Mexico:

(1) Two members who are employed by the Port of Houston Authority or have been selected by the entity to represent them.

(2) Two members who are employed by the Port of Galveston or the Texas City Port Complex or have been selected by those entities to represent them.

(3) Two members from organizations that represent shipowners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas.

(4) Two members representing originations that operate tugs or barges that utilize the port facilities at Galveston, Houston, and Texas City Port Complex.

(5) Two members representing shipping companies that transport cargo from the Ports of Galveston and Houston on liners, break bulk, or tramp steamer vessels.

(6) Two members representing those who pilot or command vessels that utilize the Ports of Galveston and Houston

(7) Two at large members who may represent a particular interest group but who utilize the post facilities at Galveston, Houston, and Texas City.

(8) One member representing labor organizations which load and unload cargo at the Ports of Galveston and Houston.

(9) One member representing licensed merchant mariners, other than pilots, who perform shipboard duties on vessels which utilize the port facilities of Galveston and Houston.

(10) One member representing environmental interests.

(11) One member representing the general public.

(c) The Secretary shall appoint the members of the Committee after first soliciting nominations by notice published in the Federal Register. The Secretary may request the head of any other Federal agency or department to designate a representative to advise, the Committee on matters with the jurisdiction of that agency or department.

(d) The Committee shall elect, by majority vote at its first meeting, one of the members of the Committee as the chairman and one of the members as the vice chairman. The vice chairman shall act as chairman in the absence or incapacity of, or in the event of a vacancy in the Office of the Chairman.

(e) Terms of members appointed to the Committee shall be for two years. The Secretary shall, not less often than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

(f) Members of the Committee who are not officers or employees of the United States shall serve without pay and members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee. While away from their homes or regular places of business, members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(g) The term of members of the Committee shall begin on October 1, 1992.

SEC. 19. LOWER MISSISSIPPI RIVER WATERWAY ADVISORY COMMITTEE.

(a)(1) There is established a Lower Mississippi River Waterway Advisory Committee (hereinafter referred to as the "Committee"). The Committee shall advise, consult with, and make recommendations to the Secretary of the department in which the Coast Guard is operating (hereinafter in this part referred to as the "Secretary") on a wide range of matters regarding all facets of navigational safety related to the Lower Mississippi River. The Secretary shall, whenever practicable, consult with the Committee before taking any significant action related to navigation safety in the Lower Mississippi River. Any advice or recommendation made by the Committee to the Secretary shall reflect the independent judgment of the Committee on the matter concerned.

(2) The Committee is authorized to make available to Congress any information, advice, and recommendations which the Committee is authorized to give the Secretary. The Committee shall meet at the call of the Chairman, or upon request of the majority of Committee members, but in any event not less than once during each calendar year. All matters relating to or proceedings of the Committee shall comply with the Federal Advisory Committee Act (5 App. U.S.C.).

(b) The Committee shall consist of twenty-four members who have expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels on the Lower Mississippi River and its connecting navigable waterways including the Gulf of Mexico.

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the head of passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessels owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations which operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels which utilize the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

(c) The Secretary shall appoint the members of the Committee upon recommendation after first soliciting nominations by notice in the Federal Register. The Secretary may request the head of any other Federal agency or department to designate a representative to advise the Committee on matters within the jurisdiction of that agency or department, who shall not be a voting member of the Committee.

(2) The Committee shall annually elect, by majority vote at its first meeting, a chairman and vice chairman from its membership. The vice chairman shall act as chairman in the absence or incapacity of, or in the event of a vacancy in, the Office of the Chairman.

(e) Terms of members appointed to the Committee shall be two years. The Secretary shall, not less than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

(f) Members of the Committee who are not officers or employees of the United States shall serve without pay and members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee. While away from their homes or regular place of business, members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

SEC. 20. VESSEL REQUIREMENTS.

Section 3503 of title 46, United States Code, is amended as follows:

(1) in subsection (a), by striking "November 1, 1993" and substituting "November 1, 1998"; and

(2) in section (b)(1):

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and substituting "; and"; and

(C) by adding 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 comply with any non-combustile material requirements that the Coast Guard prescribes for non-public spaces. Coast Guard requirements 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.".

SEC. 21. AMENDMENT OF INLAND NAVIGATIONAL RULES.

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.".

SEC. 22. DESIGNATION OF THE BORDEAUX RAILROAD BRIDGE AS AN OBSTRUCTION TO NAVIGATION.

Notwithstanding another law, the Bordeaux Railroad Bridge at mile 185.2 of the Cumberland River is deemed an unreasonable obstruction to navigation.

SEC. 23. NEW CONSTRUCTION DECLARATION.

The vessel, SEA FALCON, United States official number 606930, is deemed to have been built in the year 1990 for all purposes of subtitle II of title 46, United States Code.

SEC. 24. NATIONAL BOATING SAFETY ADVISORY COUNCIL.

Section 13110(e) of title 46, United States Code, is amended by striking "September 30, 1991" and substituting "September 30, 1996".

SEC. 25 COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE.

Section 4508(e)(1) of title 46, United States Code, is amended by striking "1992" and substituting "1994".

SEC. 26. CONVEYANCE OF CAPE MAY POINT LIGHTHOUSE.

(a)(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)(1) A conveyance of property pursuant to this section 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 United States 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 navigation aids; and

(E) the United States shall have an easement of access of 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) For purposes of this section—

(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 United States 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.

SEC. 27. SHIP SHOAL LIGHTHOUSE TRANSFER.

Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the City of Berwick, Louisiana all rights, title, and interest of the United States in the aid to navigation structure known as the Ship Shoal Lighthouse, Louisiana.

SEC. 28. CAPE COD LIGHTHOUSE AND SANKATY HEAD LIGHT STATION.

(a)(1) Not later than six months after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Army, the Secretary of the Interior, appropriate State, local, and other governmental entities, and private preservation groups, shall develop a strategy regarding the relocation, ownership, maintenance, operation, and use of Cape Cod Lighthouse (otherwise known as "Highland Light") in North Truro, Massachusetts, and Sankaty Head Light Station in Nantucket, Massachusetts.

(2) In developing the strategy, the Secretary shall determine whether and under what conditions it would be appropriate to convey the rights, title, and interest of the United States in Cape Code Lighthouse and Sankaty Head Light Station to other Federal, State, or local government agencies or private preservation groups.

(3) In preparing the strategy with respect to Cape Code Lighthouse, the Secretary shall consult with the Director of the National Park Service to determine whether the lighthouse should become part of the National Park at Cape Cod National Seashore.

(4) Any strategy developed under this section shall be consistent with—

(A) the provisions of the National Historic Preservation Act (16 U.S.C. 470 et seq.) and other applicable laws; and

(B) the goal of interpreting and preserving material culture of the United States Coast Guard.

(b) After completion of the strategy under subsection (a), the Secretary of Transportation may convey, by any appropriate means, all right, title, and interest of the United States in either or both of Cape Code Lighthouse and Sankaty Head Light Station to one or more Federal, State, or local government agencies or appropriate nonprofit private preservation groups. Any conveyance under this subsection shall be made—

(1) without payment of consideration;

(2) subject to appropriate terms and conditions as the Secretary of Transportation considers necessary; and

(3) subject to the condition that if the terms and conditions established by the Secretary are not met, the property conveyed shall revert to the United States.

SEC. 29. TRANSFER OF HECETA HEAD AND CAPE BLANCO LIGHTHOUSES.

(a)(1) the Secretary may convey by any appropriate means to the State of Oregon all right, 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)(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 right, 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 considered 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 my 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) For purposes of this section the term—

(1) "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 or 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;

(2) "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 center for public benefit for the interpretation and preservation of the maritime history of Cape Blanco, Oregon; and

(3) the term "Secretary" means the Secretary of the department in which the Coast Guard is operating.

SEC. 30. CONVEYANCE OF WHITE ISLAND LIGHTHOUSE.

(a) 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)(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 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) 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 enable the State of New Hampshire to operate at that lighthouse a nonprofit center for public benefit.

SEC. 31. CONVEYANCE OF PORTLAND HEAD LIGHTHOUSE.

(a)(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)(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) 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.

SEC. 32. OIL POLLUTION REPORT.

Not later than one year after the date of enactment of this Act, the Secretary of Transportation shall report to Congress on the effect of section 1018 of the Oil Pollution Act of 1990 (P.L. 101-380; 104 Stat. 484) on the safety of vessels being used to transport oil and the capability of owners and operators to meet their legal obligations in the event of an oil spill.

SEC. 33. PASSENGER VESSEL INVESTIGATIONS.

Section 6101 of title 46, United States Code, is amended by adding at the end the following:

"(e)(1) This chapter applies to a marine casualty involving a United States citizen on a foreign passenger vessel operating south of 75 degrees north latitude, west of 35 degrees west longitude, and east of the International Date Line; or operating in the area south of 60 degrees south latitude that—

"(A) embarks or disembarks passengers in the United States; or

"(B) transports passengers traveling under any form of air and sea ticket package marketed in the United States.

"(2) When there is a marine casualty described in paragraph (1) of this subsection and an investigation is conducted, the Secretary shall ensure that the investigation—

"(A) is thorough and timely; and

"(B) produces findings and recommendations to improve safety on passenger vessels.

"(3) When there is a marine casualty described in paragraph (1) of this subsection, the Secretary may—

"(A) seek a multinational investigation of the casualty under auspices of the international Maritime Organization; or

"(B) conduct an investigation of the casualty under chapter 63 of this title.".

SEC. 34. PORTION OF SACRAMENTO RIVER BARGE CANAL DECLARED TO NOT BE NAVIGABLE WATERS OF UNITED STATES.

For purposes of bridge administration, the Sacramento River Barge Canal, which connects the Sacramento Deep Water Ship Channel with the Sacramento River in West Sacramento, Yolo County, California, is declared to not be navigable waters of the United States for purposes of the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) from the eastern boundary of the Port of Sacramento to a point 1,200 feet east of the William G. Stone Lock.

SEC. 35 SENSE OF THE CONGRESS RELATING TO THE ROLE OF THE COAST GUARD IN THE PERSIAN GULF CONFLICT.

(1) members of the Coast Guard played an important role in the Persian Gulf Conflict;

(2) 950 members of the Coast Guard Reserve were called to active duty during the Persian Gulf Conflict and participated in various activities, including vessel inspection, port safety and security, and supervision of loading and unloading hazardous military cargo;

(3) members of Coast Guard Law Enforcement Detachments led or directly participated in approximately 60 percent of the 600

vessel boardings in support of maritime interception operations in the Middle East;

(4) 10 Coast Guard Law Enforcement Teams were deployed for enforcement of United Nations sanctions during the Persian Gulf Conflict;

(5) over 300 men and women in the Coast Guard Vessel Inspection Program participated in the inspection of military sealift vessels and facilitated the efficient transportation of hazardous materials; munitions, and other supplies to the combat zone;

(6) members of the Coast Guard served in the Joint Information Bureau Combat Camera and Public Affairs staffs;

(7) approximately 550 members of the Coast Guard served in port security units in the Persian Gulf area, providing port security and waterside protection for ships unloading essential military cargo;

(8) the Coast Guard Environmental Response Program headed the international Interagency Oil Pollution Response Advisory Team for cleanup efforts relating to the massive oil spill off the coasts of Kuwait and Saudi Arabia;

(9) the Coast Guard Research and Development Center developed a deployable positioning system for the Explosive Ordnance Disposal Area Search Detachment, saving the detachment time and thousands of dollars, while also increasing the effectiveness and efficiency of the minesweeping and ordnance disposal operations in the Persian Gulf area; and

(10) Coast Guard units remain in the Persian Gulf area and continue to provide essential support including both port security and law enforcement.

(b) The Congress commends the Coast Guard for the important role it played in the Persian Gulf Conflict and urges the people of the United States to recognize that role.

SEC. 36. BRIDGE ACROSS WAPPINGER CREEK, NEW YORK.

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.

SEC. 37. VESSEL SAFETY NEAR STRAIT OF JUAN DE FUCA.

The Secretary of Transportation, 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.

SEC. 38. TRANSFER OF CERTAIN PROPERTY AT FOLLY BEACH, SOUTH CAROLINA.

(A) Notwithstanding another law, the Secretary of Transportation shall transfer without consideration to the Charleston County Park and Recreation Commission 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 easement and restrictions of record. The transferee shall pay for all conveyance costs.

(b) 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 Foley Island to such power lines connection with the South Carolina Power Company's power line at Folly Beach.

SEC. 39. REQUIREMENT TO REPORT ON CERTAIN POLLUTION INCIDENTS.

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 Cooperation, 1990 (adopted at London, November 30, 1990), in accordance with regulations promulgated by the Secretary for that purposes.".

SEC. 40. AMENDMENTS TO IMPLEMENT INTERNATIONAL SALVAGE CONVENTION, 1989.

(a) 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" substituting "payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.".

(b) Section 5 of the Act of August 1, 1912 (46 App. U.S.C. 731), is amended by striking "Nothing in this Act" and substituting "Nothing in sections 1, 3, and 4 of this Act and section 2304 of title 46, United States Code,".

SEC. 41. CERTIFICATE OF DOCUMENTATION FOR MAYFLOWER II.

(a) Notwithstanding section 12106 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 with appropriate endorsement for employment in the coastwise trade of the United States for the vessel MAYFLOWER II, owned by Plimoth Plantation, Inc., a corporation under the laws of Massachusetts.

(b)(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 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.

SEC. 42. JOHN F. LIMEHOUSE MEMORIAL BRIDGE.

Notwithstanding another law, the John F. Limehouse Memorial Bridge across the Atlantic Intracoastal Waterway in Charleston County, South Carolina, is deemed an unreasonable obstruction to navigation.

SEC. 43. OREGON OIL SPILL RESPONSE STUDY.

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 take place.

SEC. 44. TRANSPORTATION SUBSIDY.

The Department of Transportation may include military personnel of the Coast Guard in any program in which the Department participates under section 629 of the Treasury, Postal Service and General Government Appropriations Act, 1991, Public Law 101–509, notwithstanding section 629(c)(2) of that Act.

SEC. 45. CHATHAM HARBOR, MASSACHUSETTS.

Not later than 30 days after the date of enactment of this Act, the Commandant of the Coast Guard shall provide to the U.S. Army Corps of Engineers New England Division for incorporation into their Feasibility Study on Improvement Dredging in Chatham Harbor, the following information:

(1) a description of the current and projected future navigational hazards in Chatham Harbor caused by shoaling in and around Aunt Lydia's Cove;

(2) the current and projected impacts, of these navigational hazards on the Coast Guard's missions, including:

(A) impacts on search and rescue responses;

(B) impacts on the area of response;

(C) types and costs of any special equipment needed to navigate the channel; and

(D) potential impacts on boater safety; and

(3) the benefits to local boaters and the Coast Guard that would result from improved navigation.

SEC. 46. JONES ACT WAIVERS FOR CERTAIN VESSELS.

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.

SEC. 47. NATIONAL MARITIME ENHANCEMENT INSTITUTES.

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 "shall not exceed $100,000" and substituting "by the Secretary shall not exceed $500,000".

SEC. 48. ACQUISITION OF SPACE IN VIRGINIA.

The Secretary of Commerce shall acquire space from the Administrator of General

Services in the area of Newport News-Norfolk, Virginia, for use for consolidating and meeting the long-term space needs of the National Oceanic and Atmospheric Administration in a cost effective manner. In order to acquire this space, the Administrator of General Services may, with the consent of the Secretary of Commerce, exchange real property owned by the Department of Commerce for other real property, including improvements to that property, in that area.

SEC. 49. ACQUISITION OF SPACE IN ALASKA.

The Secretary of Commerce shall acquire space from the Administrator of General Services on Near Island in Kodiak, Alaska, that meets the long-term space needs of the National Oceanic and Atmospheric Administration, if the maximum annual cost of leasing the building in which the space is located is not more than $1,000,000.

SEC. 50. TRANSFER AT JUNEAU, ALASKA.

(A) Notwithstanding another provision of law, the Secretary of Transportation 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) The Secretary of Commerce shall make the property transferred under this section available to the National Oceanic and Atmospheric Administration.

SEC. 51. STUDY OF JOINT ENFORCEMENT OF MARINE SANCTUARY REGULATIONS.

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 Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of 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 the efforts.

SEC. 52. DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF PELICAN ISLAND, TEXAS.

(a) 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, --,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 pass 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 seconds 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 seconds 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 degree 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 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 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 of 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) 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) 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 referred to 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 and the National Environmental Policy Act of 1969.

(d) 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.

SEC. 53. DISCLOSURE REGARDING RECREATIONAL VESSEL FEE.

Section 2110(b) of title 46, United States Code, is amended by adding at the end the following new paragraph:

"(5) The Secretary shall provide to each person who pays a fee or charge under this subsection a separate document on which appears, in readily discernible print, only the following statement: 'The fees for which this document was provided was established under the Omnibus Budget Reconciliation Act of 1990. Persons paying this fee can expect no increase in the quantity, quality, or variety of services the person receives from the Coast Guard as a result of that payment.'."

SEC. 54. SENSE OF THE CONGRESS ON COAST GUARD RESCUE EFFORTS.

(a) The Congress finds that—

(1) during the month of October, Air Station Cape Cod experienced one of the most intense periods of search and rescue activities, including 51 search and rescue cases of which 27 were in the last 10 days of the month;

(2) immediately prior to the Winter storm that ravaged Cape Cod from October 28 to November 1, with average seas of 35-40 feet and winds exceeding 80 knots, coastal small boat station personnel on Cape Cod and the Islands of Nantucket and Martha's Vineyard successfully worked with the local communities and the fishing industry to secure the small coastal ports to minimize damage to vessels and property;

(3) Group Portland, Group Boston, and Group Woods Hole units suffered significant damage to coastal small boat stations, lighthouses, and other aids to navigation but this damage did not affect operational readiness and Coast Guard boats and aircraft were prepared to respond to emergencies;

(4) during the five-day period from October 28 to November 1, the Coast Guard Cutter GENETIN, Coast Guard cutter BEAR and Coast Guard helicopters stationed at Elizabeth City, North Carolina participated in five offshore rescue operations that saved 21 lives;

(5) Coast Guard flight crews operating from Elizabeth City logged 56 hours of flight time during the 72-hour-period when Hurricane Grace buffeted the North Carolina Coast;

(6) the Coast Guard performed these search and rescue operations while fulfilling other important missions including the monitoring of a sulfuric acid spill and a sensitive law enforcement operation.

(b) The Congress commends the Coast Guard units involved for their remarkable skill, performance and dedication in protecting life and property and urges the people of the United States to recognize this job well done.

SEC. 55. SENSE OF THE CONGRESS ON RECREATIONAL BOAT FEES.

(a) The Congress finds that—

(1) under section 9701 of title 31, United States Code, and section 664 of title 14, United States Code, Coast Guard user fees must be fair, based on the cost to the Coast Guard of providing services or things of value, based on the value of services or things of value provided by the Coast Guard, and based on a valid public policy or interest;

(2) the Coast Guard fee imposed upon recreational boaters under section 2110(b) of title 46, United States Code, was established under the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-1397);

(3) recreational boaters who are required to pay this fee cannot expect to receive any additional service in return for payment of the fee;

(4) recreational boaters already pay a motorboat fuel tax that contributes to the Coast Guard budget; and

(5) the fee imposed upon recreational boaters will not be directly available to the Coast Guard to increase services that would benefit recreational boaters.

(b) 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 an offsetting receipts provision to comply with the requirements of the Omnibus Budget Reconciliation Act of 1990.

SEC. 56. COOPERATIVE INSTITUTE OF FISHERIES OCEANOGRAPHY.

(a) In recognition of the memorandum of understanding of March 2, 1989, regarding the Cooperative Institute of Fisheries Oceanography (hereinafter in this section referred to as the "Institute"), the Institute is established within the National Oceanic and Atmospheric Administration, in partnership with Duke University and the Consolidated University of North Carolina.

(b) Amounts appropriated pursuant to subsection (b) may be used for—

(1) administration of the Institute;

(2) research conducted by the Institute; and

(3) preparation of a five-year plan for research and for development of the Institute.

(d) Within one year of the date of the enactment of this section, the Institute shall submit to the Congress and the Under Secretary of Commerce for Oceans and Atmosphere the plan developed pursuant to subsection (c)(3).

SEC. 57. NATIONAL DEFENSE RESERVE FLEET.

Section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744) is amended by adding at the end the following new subsection:

"(d) READY RESERVE FORCE MANAGEMENT.—

"(1) MINIMUM REQUIREMENTS.—To ensure the readiness of vessels in the Ready Reserve Force component of the National Defense Reserve Fleet, the Secretary of Transportation shall, at a minimum—

"(A) maintain all of the vessels in a manner that will enable each vessel to be activated within a period specified in plans for mobilization of the vessels;

"(B) activate and conduct sea trials on each vessel at least once every 24 months;

"(C) maintain in an enhanced activation status those vessels that are scheduled to be activated within 5 days;

"(D) locate those vessels that are scheduled to be activated within 5 days near embarkation ports specified for those vessels; and

"(E) notwithstanding section 2109 of title 46, United States Code, have each vessel in-

spected by the Secretary of the department in which the Coast Guard is operating to determine if the vessel meets the safety standards that would apply under part B of subtitle II of that title if the vessel were not a public vessel.

"(2) VESSEL MANAGERS.—

"(A) ELIGIBILITY FOR CONTRACT.—A person, including a shipyard, is eligible for a contract for the management of a vessel in the Ready Reserve Force if the Secretary determines, at a minimum, that the person has—

"(i) experience in the operation of commercial-type vessels or public vessels owned by the United States Government; and

"(ii) the management capability necessary to operate, maintain, and activate the vessel at a reasonable price.

"(B) CONTRACT REQUIREMENT.—The Secretary of Transportation shall include in each contact for the management of a vessel in the Ready Reserve Force a requirement that each seaman who performs services on any vessel covered by the contract hold the license or merchant mariner's document that would be required under chapter 71 or chapter 73 of title 46, United States Code, for a seaman performing that service while operating the vessel were not a public vessel.".

Mr. FORD. I move the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

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

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

The motion to lay on the table was agreed to.

SIX-MONTH EXTENSION OF THE DEFENSE PRODUCTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3919, providing for a 6-month extension of the Defense Production Act just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table.

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

RELIEF OF ABBEY COOKE

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 635, a bill for the relief of Abbey Cooke, and the Senate proceed to its immediate consideration; that the bill be deemed read for the third time, passed, and the motion to reconsider be laid on the table.

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

RELIEF OF MARIA ERICA BARTSKI

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 159.

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

Resolved, That the bill from the Senate (S. 159) entitled "An Act for the relief of Maria Erica Bartski", do pass with the following amendment:

Page 2, line 15, after "U.S.C. 1152(e))," add the following new sentence: "No natural parent, brother, or sister, if any, of Maria Erica Bartski shall, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.".

Mr. FORD. I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

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

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

The motion to lay on the table was agreed to.

CONDEMNING SADDAM HUSSEIN

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 168, condemning Saddam Hussein for refusing to comply with U.N. Security Council Resolutions 706 and 712, just received from the House, that the concurrent resolution be agreed to, the motion to reconsider laid upon the table, and the preamble agreed to.

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

DEPARTMENT OF VETERANS AFFAIRS CHIEF MINORITY AFFAIRS OFFICER

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3327, providing for the designation of the chief minority affairs officer in the Department of Veterans Affairs, just received from the House, that the bill be deemed read three times, passed, and that the motion to reconsider be laid upon the table.

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

Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I rise in support of the pending measure, H.R. 3327, a bill that would require the Secretary of Veterans Affairs to designate an Assistant Secretary as the Department of Veterans Affairs' Chief Minority Officer [CMAO]. The CMAO would have responsibility for assessing the effects of VA policies and activities on minority veterans, including women veterans, and the needs of minority veterans for VA benefits and services and advising the Secretary on matters relating to minority veterans. This legislation was passed by the House yesterday afternoon, November 25.

Mr. President, I applaud my esteemed colleague and committee member, Senator DANNY AKAKA, for his excellent work in ensuring that important legislation in this vein is enacted. First, he worked to have such legislation included in section 601 of S. 2100 as reported by our committee on July 19, 1990 (S. Rept. No. 101-379). Next, he ensured that it was included in section 301 of S. 869 both as reported by our committee on July 24, 1991 (S. Rept. No. 102-118), and then as passed the Senate on November 20, as a substitute for the text of H.R. 2280. Today, in light of the fact that H.R. 2280 is not being acted upon, he is assisting in obtaining Senate passage of H.R. 3327 in a most timely manner.

I also note that a similar provision has been considered by the Senate since 1989 and was originally authored by Senator AKAKA's predecessor, our beloved late colleague, Spark Matsunaga, who introduced S. 564 on March 9, 1989.

Mr. President, I believe that this measure will help to effect significant improvements in service and benefits for minority veterans and the education of VA employees about the special concerns of minority veterans. I have long been concerned about VA's efforts to reach out to minority veterans and, although outreach efforts have been made, I believe they have often been too narrowly focused and that VA at times has failed, though unintentionally, to address the many unique needs and problems of minority veterans and an integrated, systematic manner. I belive that institutionalizing concern for minority veterans at the Assistant Secretary level is a necessary step to ensuring that minority veterans have access to the full range of benefits to which they are entitled by law.

Mr. President, for a further discussion and explanation of this provision, I refer my colleagues to pages 81-85 of the committee's report accompanying S. 869.

Mr. President, in closing, I reiterate my thanks to Senator AKAKA for his role in keeping this critical matter before the Congress and VA and for gaining passage of this measure. I believe that enactment of this legislation will ensure that the issues affecting minority veterans will be addressed at levels within VA that are commensurate with their importance.

Mr. AKAKA. Mr. President, I rise to support passage of H.R. 3327, a bill that would designate an Assistant Secretary of the Department of Veterans Affairs as the Chief Minority Affairs Officer of the Department.

This measure is the culmination of several years of effort on the part of the late Senator Spark Matsunaga, Representative CHARLES RANGEL, and myself to ensure that the special, often unique, needs of minority veterans—including blacks, Asians, Hispanics, Native Americana—including American Indians, and Alaskan Natives, and native Hawaiians, Pacific-Islanders, and

women veterans—are considered in a systematic manner at the highest policymaking levels of VA.

My colleagues may ask how enactment of this legislation will specifically benefit minorities. Well, it means that VA may at last examine why a native American veteran who lives on a reservation has virtually no opportunity of using his home loan entitlement. It may force VA to look at why Asian American veterans may suffer from post-traumatic stress disorder [PTSD] in greater degree than other veterans and why current VA mental health services are not organized either to recognize or treat effectively PTSD in this population. It may impel the Department to hire Spanish-speaking counselors to improve outreach to alienated Hispanic veterans. Or it may cause VA to provide health care services, such as obstetrics and gynecology, in VA medical centers that directly address the needs of female veterans.

There is, of course, no guarantee that VA will change its policies and practices with respect to minorities as a result of this legislation. At the very least, though, it will institutionalize concern for these veterans at the highest levels of the Department.

When Senator Matsunaga introduced his legislation first proposing the additional minority affairs function in 1989—similar legislation was simultaneously introduced in the House by Representative RANGEL, he was concerned by growing evidence that VA had closed its eyes to the fact that minorities typically underutilize services and benefits to which they are entitled. Spark believed that the problem of underutilization could be traced directly to two facts: First, that VA services and benefits—which are programmed with the needs of white, male veterans in mind—are often unsuited to the circumstances of minorities; and, second, that VA has failed to make a special effort to inform veterans of the availability of VA services and benefits.

Senator Matsunaga managed to include his minority affairs initiative in omnibus veterans legislation that the Senate approved overwhelmingly in 1989. Unfortunately, the House, which had not acted on Representative RANGEL'S bill, would not agree to the minority affairs provision and the initiative languished. In 1990, after the death of the Hawaii legislator, when I assumed both the Senator's veterans agenda and his place on the Senate Veterans' Affairs Committee, I continued to push for enactment of the minority affairs legislation. With the assistance of the chairman of the committee, Senator ALAN CRANSTON, I managed to include the provision in omnibus veterans health care legislation that the committee eventually reported; unfortunately, the provision ultimately died when the omnibus bill failed to be considered on the Senate floor.

This year, once again, I requested the assistance of Senator CRANSTON in including the minority affairs provision in the committee's major health care bill. This legislation, S. 869, was adopted by the Senate only a few days ago. Happily, this time, after having been twice approved by the Senate, the minority affairs provision was found acceptable by the House, which offered in its stead similar, companion legislation that had been promulgated for nearly 3 years by my friend and former House colleague, Representative RANGEL.

Mr. President, I am glad the long wait for this initiative to be passed is over. I cite this legislative history to point out the long, tortuous road that minorities must tread in their search for equality. One of the great unlearned lessons of racism in this country is that minorities are individuals, too, with specific problems that require specific answers. It is not enough to recognize their legal equality. We need to understand that the needs of blacks may differ from the needs of whites, that the problems of Asians may differ from those of American Indians, that the requirements of Native Alaskans may differ significantly from those of Hispanics. We need to educate the people of this Nation that we are not all cut from the same cookie cutter, that equal treatment does not necessarily mean identical treatment.

Mr. President, I believe that, if the spirit and purpose informing this legislation are properly interpreted, the Department of Veterans Affairs has before it an historic opportunity to establish the standards by which all Federal agencies address the programmatic needs of minorities. I urge VA to take full advantage of this important opportunity.

CONDEMNING THE MASSACRE OF EAST TIMORESE CIVILIANS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Concurrent Resolution 77.

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

Resolved, That the resolution from the Senate (S. Con. Res. 77) entitled "Concurrent resolution condemning the massacre of East Timorese civilians by the Indonesia military," do pass with the following amendments:

Strike out all after the resolving clause, and insert:

That (a) the Congress—

(1) condemns the recent, indiscriminate killing of civilians by Indonesian military forces on East Timor; and

(2) urges the Government of Indonesia to bring to justice those members of the Indonesian military responsible for the killings.

(b) It is the sense of the Congress that—

(1) the provision of assistance for Indonesia under chapter 5 of part II of the Foreign Assistance Act of 1961 (relating to international military education and training) should be contingent on the Government of Indonesia conducting a thorough and impartial investigation of these killings and prosecuting those responsible for them;

(2) the President should seek the immediate introduction of a resolution in the United Nations General Assembly instructing the United Nations Commission on Human Rights to appoint a Human Rights Rapporteur on East Timor;

(3) the President should encourage the Government of Indonesia to facilitate the work of international human rights and humanitarian organizations seeking to monitor conditions in East Timor; and

(4) the United States should work with the United Nations and the Government of Indonesia, the Government of Portugal, and other involved parties, to develop policies to address the underlying causes of the conflict in East Timor.

Amend the preamble so as to read:

Whereas on November 12, 1991, Indonesian military forces in Dili, East Timor, opened fire on a funeral procession for a youth who had been killed by Indonesian troops on October 28, 1991, killing an estimated 75 to 100 civilians and injuring many more;

Whereas up to 300 members of the funeral procession were detained immediately after the incident and several dozen remain in detention;

Whereas Indonesian soldiers killed a New Zealand national and beat several foreign journalists who were observing the procession, including two Americans (one from the New Yorker and one from Pacific Radio;

Whereas the commander of the Indonesian Armed Forces has expressed regret about the killings, and the Government of Indonesia has established a national commission of inquiry to conduct a thorough investigation of the killings;

Whereas since the Government of Indonesia invaded East Timor in 1975 tens of thousands of East Timorese have perished as a direct results of war-related killings, famine, and disease;

Whereas international human rights organizations and the Department of State's Country Reports on Human Rights Practices for 1990 report evidence of human rights violations in East Timor by Indonesian officials, including arbitrary arrests, torture and mistreatment under detention, extrajudicial killings, and denial of the fundamental right of expression; and

Whereas the United States and Indonesia have a close bilateral relationship, and United States economic and military assistance for Indonesia exceeded $50,000,000 for fiscal year 1991: Now, therefore, be it

Mr. FORD. Mr. President, I ask unanimous consent that the Senate disagree to the amendment of the House to Senate Concurrent Resolution 77.

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

AUTHORIZING REPRESENTATION OF FORMER EMPLOYEE OF THE SENATE

Mr. FORD. Mr. President, on behalf of the majority leader and the distinguished Republican leader, Mr. DOLE, I send to the desk a resolution on representation by the Senate legal counsel and authorization for testimony by a former employee, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 241) To authorize testimony by and representation of former employee of the Senate in United States versus Peter MacDonald, Jr., et al.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, in April the Senate agreed to Senate Resolution 111, 102d Congress, authorizing a former employee, Kenneth Ballen, to testify at criminal proceedings brought by the U.S. Attorney for the District of Arizona relating to alleged corruption in connection with the sale of land to the Navajo Nation. This matter was a subject of investigation by the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, which Mr. Ballen served as chief counsel, during the 100th and 101st Congresses.

Testimony from Mr. Ballen is now sought in connection with another criminal proceeding brought by the U.S. attorney in Arizona. This case concerns allegations of corruption involving Peter MacDonald, Jr., the son of the former chairman of the Navajo Tribal Council. Mr. MacDonald, was a witness before the special committee and testified under a grant of use immunity.

Counsel for the defendant in this case has requested the Senate to authorize Mr. Ballen, who is now an employee of the House of Representatives, to testify at a pretrial hearing about his communications, while chief counsel to the Senate committee, with the U.S. attorney's office concerning the receipt of immunized testimony of Mr. MacDonald.

It is appropriate, in the circumstances of this case, for the Senate to authorize testimony concerning communications between Senate staff and prosecutors about information received under a grant of use immunity. Accordingly, this resolution would authorize the former chief counsel to testify in this case. The resolution would also authorize other Senate employees from whom testimony may be necessary to testify in this case, and would provide for representation by the Senate Legal Counsel in connection with the authorized testimony in order to protect the privileges of the Senate.

The PRESIDING OFFICER. Without objection, the resolution and the preamble are agreed to.

The resolution (S. Res. 241), with its preamble, is as follows:

S. RES. 241

Whereas, in the case of United States versus Peter MacDonald, Jr., et al., No. CR-91-087-PCT-EHC, pending in the United States District Court for the District of Arizona, counsel for defendant Peter MacDonald, Jr., has requested the testimony of Kenneth M. Ballen, a former employee of the Senate on the staff of the Special Committee on Investigations of the Select Committee on Indian Affairs;

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 employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States 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, 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 Kenneth M. Ballen, and any other employee or former employee of the Senate from whom testimony may be necessary, are authorized to testify in United States versus Peter MacDonald, Jr., et al., except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is authorized to represent Kenneth M. Ballen, and any other employee or former employee of the Senate from whom testimony may be necessary, in connection with their testimony in United States versus Peter MacDonald, Jr., et al.

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

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

The motion to lay on the table was agreed to.

THE ROBERT KASTENMEIER COURTHOUSE, MADISON, WI

Mr. FORD. Mr. President, I ask unanimous consent the Committee on Environment and Public Works be discharged from further consideration of H.R. 948, the bill to name the courthouse in Madison, WI, after former Congressman Robert Kastenmeier; that the Senate proceed to its immediate consideration; that the bill be deemed read for the third time; passed; and that the motion to reconsider be laid upon the table.

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

ROBERT W. KASTENMEIER COURTHOUSE

Mr. KOHL. Mr. President, during his 32 years as a Member of the House of Representatives, Robert W. Kastenmeier ably represented his constituents in the Second District of Wisconsin, demonstrated a deep commitment to protecting the public interest, and made unprecedented contributions to our Federal judicial system. I rise today in support of legislation that pays appropriate tribute to Bob Kastenmeier. It is a bill, which was introduced on behalf of the entire Wisconsin delegation, naming the federal courthouse in Madison the "Robert W. Kastenmeier United States Courthouse."

Throughout his career in Congress, which began in 1959, Bob Kastenmeier was a champion of civil rights and civil liberties. He was a principal architect of the Civil Rights Act of 1964 and the Voting Rights Act of 1968. In the late 1970's, he spearheaded the passage of the Civil Rights of Institutionalized Persons Act. And in the 1980's, he stood firm against former President Reagan's efforts to dismantle the Legal Services Corporation—instead pushing the Federal Government to provide legal aid to the poor. A former "Wisconsin Civil Libertarian of the Year," Bob fought for prison reform, privacy protection, and an enlightened criminal justice system.

Bob was responsible for a number of critically important measures, particularly in the intellectual property area, but he focused on judicial improvement throughout his entire career. Beginning in 1969, Bob chaired the House Judiciary Committee's subcommittee with jurisdiction over the Federal court system, where he rightfully earned his reputation as the "architect of modern court reform." Indeed, Bob led the way on virtually every major court reform measure, from streamlining the existing method of judicial discipline to revamping the bankruptcy and magistrate systems.

Most recently, Bob played a key role in developing and perfecting the Judicial Improvements Act of 1990. This measure created additional judgeships, implemented various recommendations of the Federal Courts Study Committee, established a Federal Commission to review the impeachment process and helped enhance efficiency in civil cases. Bob was also a longtime advocate of openness in the courts and he fought tirelessly to allow broadcast media to cover Federal court proceedings. Last year, his work in this area came to fruition, when the judiciary agreed to an experiment that will permit cameras and microphones into the Federal courts for the first time.

Judges from both sides of the ideological spectrum have recognized the contributions that Bob Kastenmeier has made to our system of justice. Former Chief Justice Warren Burger referred to Bob as "an outstanding supporter of the needs of the Judicial Branch." Chief Justice William Rehnquist characterized Bob as "a good friend of the judicial system." And Judge Abner Mikva accurately summed up Bob's legacy, calling him "probably the best friend the Federal judges have ever had on the Hill. Nobody up there has his knowledge, understanding, sensitivity about the Judiciary."

Bob received the American Judicature Society's 1988 Justice Award for

improving the adminstration of justice. The State Bar of Wisconsin gave Bob the 1989 Public Understanding About the Law Award. Earlier this year, he received an award from the Conference of Chief Justices for his many contributions to improving State courts. Doubtlessly, he will receive many more awards—for his work on behalf of both the Judiciary and the people of Wisconisn.

Bob Kastenmeier leaves behind an extraordinary record of public service and achievement. Dedicating this Federal courthouse to Bob will, in a small way, honor a man who was a consummate lawmaker in the finest sense of the word.

TO CORRECT THE ENROLLMENT OF H.R. 2950

Mr. CHAFEE. Mr. President, I send to the desk a concurrent resolution, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 86) to correct the enrollment of H.R. 2950.

The PRESIDING OFFICER. Is there objection to the immmediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 86) was agreed to.

The concurrent resolution is as follows:

S. CON. RES. 86

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House is directed to make the following changes in the enrollment of H.R. 2950, section 1014(e)(2)—

At page 73, line 2, strike "91" and insert "81";

At page 73, line 4, strike "91" and insert "81";

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

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

The motion to lay on the table was agreed to.

STAR PRINT—SENATE RESOLUTION 216

Mr. FORD. Mr. President, I ask unanimous consent for a star print of Senate Resolution 216 which I send to the desk.

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

EXTENSION OF EXPIRATION OF LEGISLATIVE AUTHORITY RELATING TO CONSTRUCTION OF COMMEMORATIVE WORKS ON FEDERAL LANDS IN THE DISTRICT OF COLUMBIA OR ITS ENVIRONS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 317, H.R. 3169, regarding D.C. commemorative, that the bill be read a third time, and passed, that the motion to reconsider be laid upon the table; that any statements appear at the appropriate place in the record.

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

SOVIET NUCLEAR THREAT REDUCTION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3807.

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

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 3807) entitled "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", with the following amendments:

(1) In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 1, insert:

TITLE II—SOVIET WEAPONS DESTRUCTION

PART A—SHORT TITLE

SEC. 201. SHORT TITLE.

This title may be cited as the "Soviet Nuclear Threat Reduction Act of 1991".

PART B—FINDINGS AND PROGRAM AUTHORITY

SEC. 211. NATIONAL DEFENSE AND SOVIET WEAPONS DESTRUCTION.

(a) Findings.—The Congress finds—

(1) that Soviet President Gorbachev has requested Western help in dismantling nuclear weapons, and President Bush has proposed United States cooperation on the storage, transportation, dismantling, and destruction of Soviet nuclear weapons;

(2) that the profound changes underway in the Soviet Union pose three types of danger to nuclear safety and stability, as follows: (A) ultimate disposition of nuclear weapons among the Soviet Union, its republics, and any successor entities that is not conducive to weapons safety or to international stability; (B) seizure, theft, sale, or use of nuclear weapons or components; and (C) transfers of weapons, weapons components, or weapons know-how outside of the territory of the Soviet Union, its republics, and any successor entities, that contribute to worldwide proliferation; and

(3) that it is in the national security interests of the United States (A) to facilitate on a priority basis the transportation, storage, safeguarding, and destruction of nuclear and other weapons in the Soviet Union, its republics, and any successor entities, and (B) to assist in the prevention of weapons proliferation.

(b) EXCLUSIONS.—United States assistance in destroying nuclear and other weapons under this title may not be provided to the Soviet Union, any of its republics, or any successor entity unless the President certifies to the Congress that the proposed recipient is committed to—

(1) making a substantial investment of its resources for dismantling or destroying such weapons;

(2) forgoing any military modernization program that exceeds legitimate defense requirements and forgoing the replacement of destroyed weapons of mass destruction;

(3) forgoing any use of fissionable and other components of destroyed nuclear weapons in new nuclear weapons;

(4) facilitating United States verification of weapons destruction carried out under section 212;

(5) complying with all relevant arms control agreements; and

(6) observing internationally recognized human rights, including the protection of minorities.

SEC. 212. AUTHORITY FOR PROGRAM TO FACILITATE SOVIET WEAPONS DESTRUCTION.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President, consistent with the findings stated in section 211, may establish a program as authorized in subsection (b) to assist Soviet weapons destruction. Funds for carrying out this program shall be provided as specified in part C.

(b) TYPE OF PROGRAM.—The program under this section shall be limited to cooperation among the United States, the Soviet Union, its republics, and any successor entities to (1) destroy nuclear weapons, chemical weapons, and other weapons, (2) transport, store, disable, and safeguard weapons in connection with their destruction, and (3) establish verifiable safeguards against the proliferation of such weapons. Such cooperation may involve assistance in planning and in resolving technical problems associated with weapons destruction and proliferation. Such cooperation may also involve the funding of critical short-term requirements related to weapons destruction and should, to the extent feasible, draw upon United States technology and United States technicians.

PART C—ADMINISTRATIVE AND FUNDING AUTHORITIES

SEC. 221. ADMINISTRATION OF NUCLEAR THREAT REDUCTION PROGRAMS.

(a) FUNDING.—

(1) TRANSFER AUTHORITY.—The President may, to the extent provided in an appropriations Act or joint resolution, transfer to the appropriate defense accounts from amounts appropriated to the Department of Defense for fiscal year 1992 for operation and maintenance or from balances in working capital accounts established under section 2208 of title 10, United States Code, not to exceed $400,000,000 for use in reducing the Soviet military threat under part B.

(2) LIMITATION.—Amounts for transfers under paragraph (1) may not be derived from amounts appropriated for any acitivity of the Department of Defense that the Secretary of Defense determines essential for the readiness of the Armed Forces, including amounts for—

(A) training activities; and

(B) depot maintenance activities.

(b) DEPARTMENT OF DEFENSE.—The Department of Defense shall serve as the executive agent for any program established under part B.

(c) REIMBURSEMENT OF OTHER AGENCIES.—The Secretary of Defense may reimburse other United States Government departments and agencies under this section for costs of participation, as directed by the President, only in a program established under part B.

(d) CHARGES AGAINST FUNDS.—The value of any material from existing stocks and inventories of the Department of Defense, or any other United States Government department or agency, that is used in providing assistance under part B to reduce the Soviet military threat may not be charged against funds available pursuant to subsection (a) to the extend that the material contributed is directed by the President to be contributed without subsequent replacement.

(e) DETERMINATION BY DIRECTOR OF OMB.—No amount may be obligated for the program under part B unless expenditures for that program have been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1992 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 222. REPAYMENT ARRANGEMENTS.

(a) REIMBURSEMENT ARRANGEMENTS.—Assistance provided under part B to the Soviet Union, any of its republics, or any successor entity shall be conditioned, to the extent that the President determines to be appropriate after consultation with the recipient government, upon the agreement of the recipient government to reimburse the United States Government for the cost of such assistance from natural resources or other materials available to the recipient government.

(b) NATURAL RESOURCES, ETC.—The President shall encourage the satisfaction of such reimbursement arrangements through the provision of natural resources, such as oil and petroleum products and critical and strategic materials, and industrial goods. Materials received by the United States Government pursuant to this section that are suitable for inclusion in the Strategic Petroleum Reserve or the National Defense Stockpile may be deposited in the reserve or stockpile without reimbursement. Other material and services received may be sold or traded on the domestic or international market with the proceeds to be deposited in the General Fund of the Treasury.

SEC. 223. DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS.

It is the sense of the Senate that the committee of conference on House Joint Resolution 157 should consider providing the necessary authority in the conference agreement for the President to transfer funds pursuant to this title.

PART D—REPORTING REQUIREMENTS

SEC. 231. PRIOR NOTICE OF OBLIGATIONS TO CONGRESS.

Not less than 15 days before obligating any funds for a program under part B, the President shall transmit to the Congress a report on the proposed obligation. Each such report shall specify—

(1) the account, budget activity, and particular program or programs from which the funds proposed to be obligated are to be derived and the amount of the proposed obligation; and

(2) the activities and forms of assistance under part B for which the President plans to obligate such funds.

SEC. 232. QUARTERLY REPORTS ON PROGRAM.

Not later than 30 days after the end of each quarter of fiscal years 1992 and 1993, the President shall transmit to the Congress a report on the activities to reduce the Soviet military threat carried out under part B. Each such report shall set forth, for the preceding quarter and cumulatively, the following:

(1) Amounts spent for such activities and the purposes for which they were spent.

(2) The source of the funds obligated for such activities, stated specifically by program.

(3) A description of the participation of the Department of Defense, and the participation of any other United States Government department or agency, in such activities.

(4) A description of the activities carried out under part B and the forms of assistance provided under part B.

(5) Such other information as the President considers appropriate to fully inform the Congress concerning the operation of the program under part B.

(2) In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 2, insert:

TITLE III—EMERGENCY AIRLIFT AND OTHER SUPPORT

SEC. 301. AUTHORITY TO TRANSFER CERTAIN FUNDS TO PROVIDE EMERGENCY AIRLIFT AND OTHER SUPPORT.

(a) FINDINGS.—The Congress finds—

(1) that political and economic conditions within the Soviet Union and its republics are unstable and are likely to remain so for the foreseeable future;

(2) that these conditions could lead to the return of antidemocratic forces in the Soviet Union;

(3) that one of the most effective means of preventing such a situation is likely to be the immediate provision of humanitarian assistance; and

(4) that should this need arise, the United States should have funds readily available to provide for the transport of such assistance to the Soviet Union, its republics, and any successor entities.

(b) AUTHORITY TO TRANSFER CERTAIN FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Defense, at the direction of the President, may during fiscal year 1992, to the extent provided in an appropriations Act or joint resolution, transfer to the appropriate defense accounts sufficient funds, not to exceed $100,000,000, from funds described in paragraph (3) in order to transport, by military or commercial means, food, medical supplies, and other types of humanitarian assistance to the Soviet Union, its republics, or any successor entities—with the consent of the relevant republic government or independent successor entity—in order to address emergency conditions which may arise in such republic or successor entity, as determined by the President. As used in this subsection, the term "humanitarian assistance" does not include construction equipment, including tractors, scrapers, loaders, graders, bulldozers, dumptrucks, generators and compressors.

(2) REPORTS BY THE SECRETARY OF STATE.—The Secretary of State shall promptly report to the President regarding any emergency conditions which may require such humanitarian assistance. The Secretary's report shall include an estimate of the extent of need for such assistance, discuss whether the consent of the relevant republic government or independent successor entity has been given for the delivery of such assistance, describe steps other nations and organizations are prepared to take in response to an emergency, and discuss the foreign policy implications, if any, of providing such assistance.

(3) SOURCE OF FUNDS.—Any funds which are transferred pursuant to this subsection shall be drawn from amounts appropriated to the Department of Defense for fiscal year 1992 or from balances in working capital accounts established under section 2208 of title 10, United States Code.

(4) EMERGENCY REQUIREMENTS.—The Congress designates all funds transferred pursuant to this section as "emergency requirements" for all purposes of the Balanced Budget and Emergency Deficit Control Act of 1985. Notwithstanding any other provision of law, funds shall be available for transfer pursuant to this section only if, not later than the date of enactment of the appropriations Act of joint resolution that make funds available for transfer pursuant to this section, the President, in a single designation, designates the entire amount of funds made available for such transfer by that appropriations Act of joint resolution to be "emergency requirements" for all purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) REPAYMENT ARRANGEMENTS.—

(1) REIMBURSEMENT ARRANGEMENTS.—Assistance provided under subsection (b) to the Soviet Union, any of its republics, or any successor entity shall be conditioned, to the extent that the President determines to be appropriate after consultation with the recipient government, upon the agreement of the recipient government to reimburse the United States Government for the cost of such assistance from natural resources or other materials available to the recipient government.

(2) NATURAL RESOURCES, ETC.—The President shall encourage the satisfaction of such reimbursement arrangements through the provision of natural resources, such as oil and petroleum products and critical and strategic materials, and industrial goods. materials received by the United States Government pursuant to this subsection that are suitable for inclusion in the Strategic Petroleum Reserve of the National Defense Stockpile may be deposited in the reserve or stockpile without reimbursement. Other material and services received may be sold or traded on the domestic or international market with the proceeds to be deposited in the General Fund of the Treasury.

(d) DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS.—It is the sense of the Senate that the committee of conference on House Joint Resolution 157 should consider providing the necessary authority in the conference agreement for the Secretary of Defense to transfer funds pursuant to this title.

SEC. 302. REPORTING REQUIREMENTS.

(a) PRIOR NOTICE.—Before any funds are transferred for the purposes authorized in section 301(b), the President shall notify the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives of the account, budget activity, and particular program or programs from which the transfer is planned to be made and the amount of the transfer.

(b) REPORTS TO THE CONGRESS.—Within ten days after directing the Secretary of Defense to transfer funds pursuant to section 301(b), the President shall provide a report to the Committees on Armed Services of the Senate and House of Representatives, the Committees on Appropriations of the Senate and House of Representatives, and the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives. This report shall at a minimum, set forth—

(1) the amount of funds transferred under this title, including the source of such funds;

(2) the conditions which prompted the use of this authority;

(3) the form and number of life assets planned to be used to deliver assistance pursuant to this title;

(4) the types and purpose of the cargo planned to be delivered pursuant to this title; and

(5) the locations, organizations, and political institutions to which assistance is planned to be delivered pursuant to this title.

(3) In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 3, insert:

TITLE IV—ARMS CONTROL AND DISARMAMENT ACT

SEC. 401. ARMS CONTROL AND DISARMAMENT AGENCY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 49(a) of the Arms Control and Disarmament Act (22 U.S.C. 2589(a)) is amended—

(1) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(2) in paragraph (1) as so redesignated, by striking out "$36,000,000 for the fiscal year 1990 and $37,316,000 for the fiscal year 1991" and inserting in lieu thereof "$44,527,000 for fiscal year 1992 and $45,862,810 for fiscal year 1993"; and

(3) in paragraph (2) as so redesignated, by striking out "fiscal years 1990 and 1991" and inserting in lieu thereof "each fiscal year for which an authorization of appropriations is provided in paragraph (1)".

(b) ADMINISTRATIVE AUTHORITIES REGARDING INVESTIGATIONS.—Section 41 of that Act (22 U.S.C. 2581) is amended—

(1) by redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively; and

(2) by inserting after paragraph (g) the following new paragraph (h):

"(h) administer oaths and take sworn statements in the course of an investigation made pursuant to the Director's responsibilities under this Act;".

(c) ACDA REVITALIZATION.—Not later than December 15, 1992, the Inspector General of the Arms Control and Disarmament Agency (who serves also as the Inspector General of the Department of State) shall submit to the President, the Speaker of the House of Representatives, and the chairman of the Committee on Foreign Relations of the Senate a report with regard to the Agency's fulfillment of the primary functions described in section 2 of the Arms Control and Disarmament Act (22 U.S.C. 2551). Such report shall address the current ability and performance of the Agency in carrying out these functions and shall provide detailed recommendations for any changes in executive branch organization and direction needed to fulfill these primary functions. Within 60 days after submission of this report, the President shall submit the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate comments on any recommendations contained in the report dealing with executive branch organization and direction.

SEC. 402. ON-SITE INSPECTION AGENCY.

(a) RESPONSIBILITIES OF THE ON-SITE INSPECTION AGENCY.—

(1) ADDITIONAL RESPONSIBILITIES.—Section 61 of the Arms Control and Disarmament Act (22 U.S.C. 2595) is amended—

(A) by redesignationg paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(B) by inserting after paragraph (4) the following new paragraph:

"(5) the On-Site Inspection Agency has additional responsibilities to those specified in paragraph (4), including the monitoring of nuclear tests pursuant to the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty and the monitoring of the inspection provisions of such additional arms control agreements as the President may direct;".

(2) CONFORMING AMENDMENTS TO DEFINITIONS.—Section 64 of that Act (22 U.S.C. 2595c) is amended—

(A) by striking out "and" at the end of pargraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(C) by adding after pargraph (2) the following:

"(3) the term 'Peaceful Nuclear Explosions Treaty' means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on Underground Nuclear Explosions for Peaceful Purposes (signed at Washington and Moscow, May 28, 1976); and

"(4) the term 'Threshold Test Ban Treaty' means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapons Tests (signed at Moscow, July 3, 1974).".

(b) IMPROVING CONGRESSIONAL OVERSIGHT OF ON-SITE INSPECTION ACTIVITIES.—Title V of that Act is amended–

(1) by redesignating section 64 as section 65; and

(2) by inserting after section 63 the following:

"SEC. 64. IMPROVING CONGRESSIONAL OVERSIGHT OF ON-SITE INSPECTION ACTIVITIES.

"(a) REPORT FROM THE PRESIDENT.—Concurrent with the submission to the Congress of the request for authorization of appropriations for OSIA for fiscal year 1993, the President shall submit a report on OSIA to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Armed Services of the House of Representatives and Senate. The report shall include a review of—

"(1) the history of OSIA, including how, when, and under what auspices it was established, including the applicable texts of the relevant executive orders;

"(2) the missions and tasks assigned to OSIA to date;

"(3) any additional missions and tasks likely to be assigned to OSIA during fiscal year 1993;

"(4) the budgetary history of OSIA; and

"(5) the extent to which OSIA plays a role in arms control policy formulation and operational implementation.

"(b) REVIEW OF CERTAIN REPROGRAMMING NOTIFICATIONS.—Any notification submitted to the Congress with respect to a proposed transfer, reprogramming, or reallocation of funds from or within the budget of OSIA shall also be submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and shall be subject to review by those committees.".

Mr. WARNER. Mr. President, I must lodge my strongest objections to the inclusion in the final version of H.R. 3807, the CFE implementing legislation of language attempting to confuse and complicate congressional oversight of the On-Site Inspection Agency [OSIA].

Unfortunately, the House amendment to the Senate amendment to the bill now contains a provision designed to be first step in taking congressional oversight jurisdiction over the On-Site Inspection Agency from the Committees on Armed Services and transferring that jurisdiction to the Foreign Affairs and Foreign Relations Committees. I find it most disappointing that this bill, being considered at this very late hour in this session, includes this provision without any opportunity for consideration by the Senate Armed Services Committee.

Those of us who have been interested and involved in the work of the On-Site Inspection Agency [OSIA] believed that we had reached an understanding with the House Foreign Affairs Committee that this provision would not be included in the bill. Yet the House, acting in the middle of last night, has nonetheless added this provision to this important bill.

Mr. President, this is not a new issue. Ever since the President appointed the Department of Defense as the Cabinet-level Department having responsibility for OSIA, the House Foreign Affairs Committee has been tempting to obtain jurisdiction over the agency. There have been a number of such attempts by that House Committee since 1988, all of which have been defeated.

However, the Senate is now confronted with holding up implemention of the CFE Treaty or with having to accept this House provision.

Mr. President, the On-Site Inspection Agency is a Department of Defense Agency. A large component of its activity can properly be characterized as defense logistics: marshaling personnel, aircraft, and equipment for short-notice operations at home and overseas.

OSIA uses aircraft and crews from the Military Airlift Command. Roughly three-quarters of OSIA's personnel are military officers, and the military forms the largest pool of personnel with the linguistic skills and technical background needed for this work.

Many of OSIA's permanent or seconded personnel are specailists in such fields as security, counterintelligence, or technical aspects of data collection—especially with regard to nuclear tests, for threshold Test Ban Treaty verification, and high-energy electronic systems, for portal monitoring under the INF Treaty. Specialized personnel come from the military services, national laboratories, and other agencies.

The need to obtain and coordinate the use of such specialized personnel is one reason for the current funding and oversight arrangements. Another reason is the need to ensure that OSIA inspectors report the facts without worrying about whether policymakers will like what they hear. In short, OSIA performs an execution function—not a policy function—that requires much manpower, expertise, infrastructure

and support of the type that the Department of Defense is best suited to provide. the integration of OSIA in DOD makes perfect sense.

Many Government programs, particularly defense and intelligence programs, are authorized by other committees but are of interest to the Foreign Relations and Foreign Affairs Committees. Although the Armed Services Committee is the primary committee of jurisdiction, OSIA cooperates well with all interested committees. Thus, when the CFE Treaty came before the Senate Foreign Relations Committee, Maj. Gen. Robert W. Parker, the Director of OSIA, testified on the agency's preparedness to implement the treaty.

Both the On-Site Inspection Agency and the mechanisms for congressional oversight of OSIA are working excellently. There is no need to change either the organization or its congressional oversight procedures.

Yet, today, we are about to enact a provision designed to begin those changes.

Mr. President, the House amendment now being considered by the Senate will unnecessarily involve the Foreign Affairs and Foreign Relations Committees in the budget review and oversight process of OSIA. It will not contribute to the highly effective and highly successful operations of OSIA. It could contribute to confusion and inefficiency in this important agency.

Mr. President, in light of the other valuable and important features of the pending bill, I am not going to block the Senate's passage of this legislation today. However, let me make it clear that I will subsequently seek to repeal this unnecessary and counterproductive legislation.

Furthermore, let me make it clear that I am not blocking this legislation today because the proper committees of jurisdiction, namely, the Armed Services Committees will continue to exercise exclusive jurisdiction over the operation, policy, and budget authorization approval over the OSIA.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed as in morning business.

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

SALUTE TO LLOYD "BUDDY" FLETCHER

Mr. DOLE. Mr. President, I want to take a minute before Thanksgiving to join with many others in this town in being thankful for the privilege of knowing Lloyd "Buddy" Fletcher.

Buddy passed away last month at the age of 57. He left behind a loving family, a legion of friends, admirers, and a record of service to America.

After 8 years in the U.S. Marine Corps, Buddy joined the Department of Transportation in 1968, where he soon became the driver to the Secretary of Transportation. Over the years, Buddy would serve eight Transportation Secretaries with class and professionalism that were second to none.

I crossed paths with "Buddy" when my wife Elizabeth, became Secretary of Transportation. It soon became clear to Elizabeth and myself that "Buddy" was more than a driver—he was a caring friend, and someone who was the unofficial historian of the Transportation Department.

I attended Buddy's funeral last month, and was struck by the number of men and women from all walks of life who attended. There were drivers from other Government departments who looked to "Buddy" as a mentor and role model. There were DOT employees ranging from entry-level to Transportation Secretaries. It seemed that everyone had a special memory of "Buddy"—of his love of the Redskins, his pride in his reputation as the best-dressed person at the Department, and his warm and winning personality.

Mr. President, "Buddy" Fletcher will be greatly missed by many people, including Elizabeth and myself. Our condolences go out to his wife, Carolyn, his daughters Brenda Fletcher and Katrina Newlin, and his two grandchildren.

I EXTEND MY THANKS

Mr. DOLE. Mr. President, as we close the first session of this Congress, I extend my thanks to the majority leader and the members of his staff for all of their courtesies over the past several months. I also thank the majority whip, the distinguished Senator from Kentucky, Senator FORD, and all of my colleagues on the other side for the cooperation we have had on this side during this first session of Congress.

We have not always agreed, but I think for the most part we have been agreeable, sometimes doubtful not generally agreeable.

I also thank all the members of the Senate staff, all those who work day in and day out, sometimes with very little if any recognition, doing their job whether it be inside the Chamber, or doorkeepers outside the Chamber, or someone in the gallery working for the U.S. Senate, working for the institution, and working so that we may be more productive and more effective in our work in the U.S. Senate. So to all those faithful, loyal employees of the U.S. Senate, I certainly extend my thanks, my best wishes for a happy thanksgiving and a merry Christmas to all, every one and their families.

I would also be remiss in not thanking my right hand, right arm, the distinguished Senator from Wyoming, Senator ALAN SIMPSON; members of our Republican leadership, Senator THURMOND, as I said, Senator SIMPSON, Senator COCHRAN, Senator NICKLES, Senator KASTEN, and Senator GRAMM for their help in working on many, many programs this year.

I believe overall Congress has made a good record. I think we can look at some major accomplishments, and I think we closed out with a major accomplishment in passing the transportation bill, which was a bipartisan measure and which did have the leadership of the President of the United States. That should give, I hope, many people across America confidence that there are going to be jobs, lots of jobs, all across America, in the foreseeable future.

That in itself, in my view, is a good way to cap any session of any legislature, to pass a bill that you know is going to mean a great deal not only in transportation and safety, but as far as jobs for the future of American men and women, many of whom are out of work, many are skilled, many partially skilled, many looking for work, and this will provide that opportunity.

I also thank all of my colleagues on this side of the aisle for the many courtesies extended to me over the past several months in this session and to the President of the United States. I have just talked with the President of the United States. He thanked me for my efforts and the efforts of others in the Congress. I thanked him for his leadership. I think President Bush has done an outstanding job.

Sometimes we may have differences with people who work in the White House, but I think very honestly I think I know John Sununu, based on our association a few years ago in New Hampshire, and I could be very sensitive about it. But my view is the Chief of Staff John Sununu is doing and has done an outstanding job for President Bush. There have been some minor lapses, but we all make mistakes. When you are in a position that he is in he gets more attention, I guess, than some of the rest of us. And certainly to Mr. Darman, the OMB Direc-

tor, and Nick Brady, a former colleague of ours and now Secretary of the Treasury, particularly working closely with those three members of the President's official staff or official family. We have had a lot of work and a lot of issues. Certainly I have worked with other members of the President's Cabinet, but I think particularly those three have been almost weekly, sometimes daily contact, sometimes several times a day, and I certainly extend my thanks to them and to Roger Porter and to the President's chief economic adviser, Mr. Boskin, and all the others who have been working together.

I will just say as I close, I hope in December there will be efforts by both parties to find the right package, the right economic growth package that we can be certain will have some positive impact on the economy. Keep in mind it is a $5.6 trillion economy. We all have ideas on how to make it move. We want to make as certain as we can that what we do in the Congress will make a difference in the lives of the American people all across America, will pick up the economy, will create some job opportunities, will create opportunities to buy cars and homes and all the consumer goods that the American people would like to have and will lead people out of poverty and will give them a better chance in life.

So it is my hope and it is going to have to have to be a consensus, going to have to be bipartisan. The leadership is going to have to come from President Bush. We will have some time now to focus on not the political rhetoric but what can we do, what can the Democrats do, what can the Republicans do, what can we do together, what can we do working with President Bush, working with leadership across America, in the private sector, in the public sector, in organized labor, in agriculture, all across America, to get this economy moving in the right direction and moving more rapidly toward a full recovery.

So it seems to me that we have, let us see, about 8 weeks in which do do that, and I know that the adjournment resolution provides that in certain cases the majority leader and the Speaker of the House, after consultation with the minority leader of the Senate, the minority leader of the House, can call us back after 48 hours' notice, and that may happen. I am not certain of that, but in any event we have this opportunity now, in my view, to take a look, go back home, visit the people, find out how they view the various problems, whether it is health care, whether it is the economy, whether it is agriculture, whether it is unemployment, whether it is crime, whatever the problem may be.

So I conclude by wishing all of my colleagues a happy holiday season and saying that I think we have had a pretty good year. There are a lot of major pieces of legislation that we passed in this Congress, this session, first session of this Congress by a bipartisan majority. We have had our differences. We have had our differences in the gulf. We have had our differences on unemployment. We have had our differences, to some extent, on civil rights. We have had our differences on the crime bill. We have had a lot of differences. But we have had a lot of areas where there were no differences at all, and I can list a dozen or more areas where we worked together in total bipartisanship. And I think the American people appreciate that.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Kentucky.

Mr. FORD. Mr. President, first, let me say to the distinguished Republican leader I appreciate his kind words, not only for his colleagues but on this side. It has been an experience for me my first year as whip. I have survived the fire fairly well, not having been enlisted too many times. I have enjoyed working with the Republican whip. We have been straightforward with each other. We do not play games. And I have always liked it that way.

There is one thing the Republican leader said that I think is important. We have a few weeks now to look at some packages, some help to get the economy going, and I hope that when he says that the President of the United States is going to give us some leadership, he will be at the table also. We cannot do it with Representatives and Senators alone; the Executive has to be a part of that, in my opinion. If we come together as Americans, I think we can get this country going.

I look forward to that and hope that the Senator's expression of cooperation follows through as the holiday season comes. It seems a little easier to agree during holiday seasons than any other time, and I look forward to that.

HOUSE CURRENT RESOLUTION 260—PROVIDING FOR ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 260, providing for adjournment of the two Houses of Congress just received from the House.

The PRESIDING OFFICER. The clerk will report the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 260) providing for adjournment of the Congress to a date certain.

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.

AMENDMENT NO. 1463

Mr. FORD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. MITCHELL, proposes an amendment numbered 1463.

Mr. FORD. 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 end of section 2, Strike the "period" and insert in lieu thereof, the following: "; and that when the Congress convenes on January 3, 1992, for the second session of the 102d Congress, the Senate shall not conduct any organizational or legislative business and when it recesses or adjourns on that day, it stand in recess or adjournment until 11:30 a.m. on Tueday, January 21, 1992, or until noon on the second day after Members are notified to reassemble pursuant to section 3 of this concurrent resolution, whichever occurs first.".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So, the amendment (No. 1463) was agreed to.

The PRESIDING OFFICER. Without objection, the concurrent resolution, as amended, is agreed to.

So, the concurrent resolution (H. Con. Res. 260), as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

NATIONAL ACADEMIC REPORT CARD ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of calendar No. 69, S. 2, a bill to promote achievement of national education goals and for other purposes.

The PRESIDING OFFICER. Is there objection?

Mr. FORD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

Mr. FORD. Mr. President, I move that the Senate proceed to calendar No. 69, S. 2, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to S. 2, a bill to strengthen education for American families.

George Mitchell, Daniel K. Akaka, Paul Simon, Christopher Dodd, Pat Leahy, Jeff Bingaman, Carl Levin, Dennis DeConcini, Claiborne Pell, Paul Wellstone, Albert Gore, Jr., John Glenn, Kent Conrad, David Pryor, Harris Wofford, Wyche Fowler, Jr.

Mr. FORD. Mr. President, I withdraw the motion to proceed.

The PRESIDING OFFICER. Without objection, the motion is withdrawn.

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

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

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank the Chair.

(The remarks of Mr. CONRAD pertaining to the introduction of S. 2136 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

MESSAGES FROM THE HOUSE RECEIVED DURING THE ADJOURNMENT

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on a date subsequent to the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 159. An act for the relief of Maria Erica Bartski;

S. 367. An act to amend the Job Training Partnership Act to encourage a broader range of training and job placement for women, and for other purposes;

S. 1532. An act to revise and extend the programs under the Abandoned Infants Assistance Act of 1988;

S. 2050. An act to ensure that the ceiling established with respect to health education assistance loans does not prohibit the provision of Federal loan insurance to new and previous borrowers under such loan program, and for other purposes;

S. 2098. An act to authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration;

H.R. 525. An act to amend the Federal charter for the Boys' Clubs of America to reflect the change of the name of the organization to the Boys and Girls Clubs of America;

H.R. 635. An act for the relief of Abby Cooke;

H.R. 690. An act to authorize the National Park Service to acquire and manage the Mary McLeod Bethune Council House National Historic Site, and for other purposes;

H.R. 829. An act to amend title 28, United States Code, to make changes in the composition of the Eastern and Western Districts of Virginia;

H.R. 948. An act to designate the U.S. Courthouse located at North Henry Street in Madison, WI, as the "Robert W. Kastenmeier United States Courthouse";

H.R. 990. An act to authorize additional appropriations for land acquisition at Monocacy National Battlefield, MD;

H.R. 1009. An act to amend the Wild and Scenic Rivers Act by designating segments of the Lamprey River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes;

H.R. 1476. An act to provide for the divestiture of certain properties of the San Carlos Indian Irrigation Project in the State of Arizona, and for other purposes;

H.R. 1724. An act to provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary;

H.R. 2105. An act to designate an area as the Myrtle Foester Whitmire Division of the Aransas National Wildlife Refuge;

H.R. 3012. An act to amend the Wild and Scenic Rivers Act to designating the White Clay Creek in Delaware and Pennsylvania for study and potential addition to the National Wild and Scenic Rivers System, and for other purposes;

H.R. 3029. An act to make technical corrections to agricultural laws;

H.R. 3049. An act to amend the Immigration and Nationality Act to restore certain exclusive authority in courts to administer oaths of allegiance for naturalization, to revise provisions relating to O and P nonimmigrants, and to make certain technical corrections relating to the immigration laws;

H.R. 3169. An act to lengthen from 5 to 7 years the expiration period applicable to legislative authority relating to construction of commemorative works on Federal land in the District of Columbia and its environs;

H.R. 3245. An act to designate National Forest System lands in the State of Georgia as wilderness, and for other purposes;

H.R. 3322. An act to designate the building in St. Louis, MO, which is currently known as the Wellston Station, as the "Gwen B. Giles Post Office Building";

H.R. 3327. An act to amend title 38, United States Code, to provide for the designation of an Assistant Secretary of the Department of Veterans Affairs as the Chief Minority Affairs Officer of the Department;

H.R. 3387. An act to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plans for Pennsylvania Avenue between the Capitol and the White House, and for other purposes;

H.R. 3435. An act to provide funding for the resolution of failed savings associations and working capital for the Resolution Trust Corporation, to restructure the Oversight Board and the Resolution Trust Corporation, and for other purposes;

H.R. 3531. An act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1992, and for other purposes;

H.R. 3576. An act to amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas;

H.R. 3595. An act 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;

H.R. 3604. An act to direct acquisitions within the Eleven Point Wild and Scenic River, to establish the Greer Spring Special Management Area in Missouri, and for other purposes;

H.R. 3709. An act to waive the period of Congressional review for certain District of Columbia acts;

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 the implementation of the Treaty on Conventional Armed Forces in Europe;

H.R. 3881. An act to expand the boundaries of Stones River National Battlefield, Tennessee, and for other purposes;

H.R. 3909. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes;

H.R. 3919. An act to temporarily extend the Defense Production Act of 1950;

H.R. 3932. An act to improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes;

S.J. Res. 198. Joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II;

H.J. Res. 157. Joint resolution making dire emergency supplemental appropriations and transfers for relief of the effects of natural disasters, and for other urgent needs, and for incremental costs of "Operation Desert Shield/Desert Storm" for the fiscal year ending September 30, 1992, and for other purposes;

H.J. Res. 191. Joint resolution designating January 5, 1992 through January 11, 1992, as "National Law Enforcement Training Week";

H.J. Res. 212. Joint resolution to designate the week beginning February 16, 1992, as "National Visiting Nurse Associations Week";

H.J. Res. 356. Joint resolution designating December 1991 as "Bicentennial of the District of Columbia Month"; and

H.J. Res. 372. Joint resolution designating December 21, 1991, as "Basketball Centennial Day."

Under the authority of the order of the Senate of January 3, 1991, the en-

rolled bills and joint resolutions were signed on December 3, 1991, during the adjournment of the Senate, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on December 6, 1991, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

S. 543. An act to require the least-cost resolution of insured depository institutions, to improve supervision and examinations, to provide additional resources to the Bank Insurance Fund, and for other purposes;

S. 1176. An act to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and for other purposes;

S. 1193. An act to make technical amendments to various Indian laws;

S. 1462. An act to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment;

S. 1891. An act to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes;

H.R. 1776. An act to authorize for fiscal year 1992 the U.S. Coast Guard budget.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills were signed on December 6, 1991, during the adjournment of the Senate, by the President pro tempore [Mr. BYRD].

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on December 10, 1991, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker pro tempore [Mr. HOYER] has signed the following enrolled bill:

H.R. 2950. An act to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bill was signed on December 10, 1991, during the adjournment of the Senate, by the Vice President.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that he had presented to the President of the United States the following enrolled bills and joint resolution:

On December 4, 1991:

S. 159. An act for the relief of Maria Erica Bartski;

S. 367. An act to amend the Job Training Partnership Act to encourage a broader range of training and job placement for women, and for other purposes;

S. 1532. An act to revise and extend the program under the Abandoned Infants Assistant Act of 1988;

S. 2050. An act to ensure that the ceiling established with respect to health education assistance loans does not prohibit the provision of Federal loan insurance to new and previous borrowers under such loan program, and for other purposes;

S. 2098. An act to authorize the President to appoint Major General Jerry Ralph Curry to the Office of Administrator of the Federal Aviation Administration; and

S.J. Res. 198. Joint resolution to recognize contributions Federal civilian employees provided during the attack on Pearl Harbor and during World War II.

On December 9, 1991:

S. 543. An act to require the least-cost resolution of insured depository institutions, to improve supervision and examinations, to provide additional resources to the Bank Insurance Fund, and for other purposes;

S. 1176. An act to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and for other purposes;

S. 1193. An act to make technical amendments to various Indian laws;

S. 1462. An act to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment; and

S. 1891. An act to permit the Secretary of Health and Human Services to waive certain recovery requirements with respect to the construction or remodeling of facilities, and for other purposes.

MEASURES PLACED ON THE CALENDAR

On December 11, 1991, pursuant to the order of September 10, 1991, the Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bill; which was placed on the calendar:

S. 1088. A bill to amend the Public Health Service Act to establish a center for tobacco products, to inform the public concerning the hazards of tobacco use, to provide for the disclosure of additives to such products, and to require that information be provided concerning such products to the public, and for other purposes.

REPEAL OF SECTION 618 OF THE RESOLUTION TRUST CORPORATION, REFINANCING, RESTRUCTURING AND IMPROVEMENT ACT

The text of the bill (S. 2131) to repeal section 618 of the Resolution Trust Corporation, Refinancing, Restructuring and Improvement Act of 1991, as passed by the Senate on November 27, 1991, is as follows:

S. 2131

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

SECTION 1. Section 618 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 is repealed.

SEC. 2. Subsection 12(b)(7) of Public Law 94-204, as amended, and subsection 9102(e) of Public Law 101-165, as amended, are each further amended by deleting in the appropriate place the phrase "real, personal," and substituting in lieu thereof the phrase "real, personal (including, but not limited to intangible assets sold or offered by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation such as financial instruments, notes, loans and bonds),".

BRONZE STAR

The text of the bill (S. 2015) to urge and request the award of the bronze star to Navy and Marine Corps personnel who served in the defense of Corregidor Island, the Philippines, under General Wainwright, as passed by the Senate on November 27, 1991, is 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 SERVE 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 Philippines, 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 appropriates 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.

PHOENIX INDIAN SCHOOL

The text of the bill (S. 2034) to establish certain requirements for the Secretary of the Interior to undertake environmental cleanup at the Phoenix Indian School property, as passed by the Senate on November 27, 1991, as follows:

S. 2034

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

SECTION 1. The Secretary of the Interior shall remove, at the earliest possible date, all asbestos within building and related infrastructure, including underground pipes, located on the 110 acre parcel of Federal

property known as the Phoenix Indian School. The obligation of the Secretary to carry out these activities shall continue beyond the date of transfer of the Phoenix Indian School property from Federal ownership.

CORRECTING THE ENROLLMENT OF S. 543

The text of the concurrent resolution (S. Con. Res. 83) to authorize a correction in the enrollment of S. 543, as agreed to by the Senate on November 27, 1991, is as follows:

S. CON. RES. 83

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill, S. 543 the Secretary of the Senate shall make the following correction:

At the appropriate place, insert:

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 and the deposits of Community National Bank and Trust Company of New York that—

(1) were deposited by a charitable organization as such term is defined by New York State law, or by a religious organization; and

(2) were deposits of such bank on the date of its closure by the Office of the Comptroller of the currency,

shall be fully insured notwithstanding any other provisions of the Federal Deposit Insurance Act.

CORRECTING THE ENROLLMENT OF H.R. 3435

The text of the concurrent resolution (S. Con. Res. 84) to correct the enrollment of H.R. 3435, the RTC funding bill, as agreed to by the Senate on November 27, 1991, is as follows:

S. CON. RES. 84

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House of Representatives is directed to make the following changes in the enrollment of H.R. 3435:

(a) Strike section 618.

(b) At the end of the Act add the following: "Sec. . Subsection 12(b)(7)(vii) of Public Law 94-204, as amended, and subsection 9102(e) of Public Law 101-165, as amended, are each amended further by deleting in the appropriate place the phrase 'real, personal,' and substituting in lieu thereof the phrase 'real, personal (including, but not limited to intangible assets such as financial instruments, notes, loans, bonds, and licenses),'.".

CORRECTING THE ENROLLMENT OF H.R. 3531

The text of the concurrent resolution (S. Con. Res. 85) to correct a technical error in the enrollment of the bill (H.R. 3531), and for other purposes, as agreed to by the Senate on November 27, 1991, is as follows:

S. CON. RES. 85

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 3531), an Act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1992, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

(1) In section 8 of the bill insert a semicolon immediately after the first quotation marks.

(2) In section 5(d)(2)(C) insert quotation marks immediately before "CHAPTER 4—PATENT FEES;".

CORRECTING THE ENROLLMENT OF H.R. 2950

The text of the concurrent resolution (S. Con. Res. 86) to correct the enrollment of H.R. 2950, as agreed to by the Senate on November 27, 1991, is as follows:

S. CON. RES. 86

Resolved by the Senate (the House of Representatives concurring), That the Clerk of the House is directed to make the following changes in the enrollment of H.R. 2950, section 1014(c)(2)—strike out "91" and insert "81" both places it appears.

ADDITIONAL STATEMENTS

RETAIL DEPOSIT TAKING BY FOREIGN BANKS

• Mr. GARN. Mr. President, a number of issues have already arisen in connection with the deposit insurance legislation adopted by the Congress in the closing hours of the last session. While I have separately made a statement on many of these issues, a subject of particular concern, from both a policy and technical standpoint, is the requirement that foreign banks wishing to take retail deposits may only do so through a subsidiary rather than through insured branches.

Because of unclear legal construction, the regulators who must implement this provision and the banks who will be subject to its requirements have had considerable difficulty discerning its exact intent. In the interest of assisting their deliberations, I would like to provide a history of my involvement with this provision. My opposition to it and my intentions in achieving certain modifications to limit its impact are instructive in understanding the intent of the provision.

As a starting point, I would note that there is no obvious justification for this provision at all. The Treasury study, "Modernizing the Financial System," raised no concerns with foreign bank retail activities in the United States and made no recommendations to restrict or restructure these activities. The Federal Reserve bill, drafted as a response to the BCCI and Banco Lavoro scandals, made no recommendations in this area. Likewise, the deposit insurance reform bills introduced by the committee chairmen in the two Houses of Congress which served as bases for eventual legislation did not address this issue.

The basis reason that retail deposit taking was not an issue in the legislation was that insured deposit taking by foreign banks had never cost the taxpayers a dime. It is true that during debate on the International Banking Act in 1977, the FDIC had argued that subsidiaries rather than direct branches were administratively simpler to deal with for the Corporation. However, it is also true that the subsidiary subsidiary structure reduces depositor protection in that it tends to limit access by the FDIC to the parent bank's resources. Furthermore, it raises national treatment concerns. In the International Banking Act, it was decided to permit establishment by foreign banks either through branches or subsidiaries.

What has occurred in the meantime to alter these judgments. Clearly the foreign bank presence in the United States has grown. However, no history of losses or administrative problems arising from the operation of foreign bank branches has intervened to alter the original judgment. Furthermore, as a result of the regulatory changes in the Fed bill, foreign banks will now be subject to extensive Federal oversight including the right to terminate, expanded civil penalties, and new criminal penalties.

With this history, one might wonder how the subsidiary issue was introduced into the debate. In fact, it was Treasury that argued, in the specific circumstance of a foreign bank wishing to engage in nontraditional activities such as securities and insurance, that such a foreign bank should be required to form a U.S. holding company and a well-capitalized banking subsidiary. It was argued that since access to these new powers was going to require higher capital and closer regulation for U.S. banks, the only way to ensure similar compliance by foreign banks was to impose structural requirements. At the same time, the Administration opposed any change in structure or regulation of banks wishing only to engage in traditional banking activities.

While there was never opposition from any quarter to tougher enforcement authority for the Fed, I opposed the Treasury roll up proposal as unnecessary to achieve the objective of higher capital and closer regulation and as inconsistent with the longstanding U.S. policy of 'national treatment.' Under this standard, foreign banks had long been permitted to establish in the form of direct branches, including insured branches. In foreign markets, Treasury has long argued that foreign requirements for U.S. banks to operate through subsidiaries denied equality of competitive opportunity.

The draft committee print originally circulated to Banking Committee members adopted the Treasury roll up proposal for new powers but it went considerably farther. The print would

have required foreign banks to create a U.S. subsidiary in order to engage in interstate branching. And since interstate branching might lead to greatly expanded interstate retail operations, expanded deposit insurance requirements for foreign banks were added to the interstate section of the bill.

I was successful in making the case that the proposed structural requirements were unnecessary and counterproductive to our overall banking policy. Consequently, the holding company and subsidiary requirements for expanded powers and interstate branching were dropped in favor of the approach to national treatment embodied in the International Banking Act: direct branches permitted, with the foreign bank treated as a holding company for purposes of evaluating capital and management. However, to respond to the concerns Treasury had raised with capital and regulation, I supported committee amendments requiring careful analysis and enforcement of equivalent capital for foreign banks wishing to engage in expanded activities and a study of a subsidiary requirement as the future rule for foreign bank operations.

In order to achieve agreement on my proposed modifications at markup, I agree to maintain expanded deposit insurance requirements in the committee bill as part of the interstate branching provisions for foreign banks. This included an amendment requiring any foreign bank that wished to take retail deposits below $100,000 to do so only through subsidiaries. While my agreement on this point constituted acquiescence in a mini-roll-up of existing insured branches, my agreement on this point was clearly provisional.

The proviso attached to the amendment was that, since there no compelling argument for a change in policy and the committee had not considered this proposal or its implications, the committee should develop a record on the proposal by seeking the views of the agencies involved and the affected parties so that we could make an informed judgment. Senator RIEGLE and I therefore sent identical letters to the Chairmen of the Federal Reserve Board and the FDIC, the Treasury Secretary, and various banking interest groups seeking their views on the subsidiary roll up and two other options for expanded deposit insurance requirements.

The understanding that this provision was subject to further review was reflected in the committee report on S. 543. The body of the report states that the committee's concerns with respect to deposit insurance arose to the context of "removing current Federal and State barriers to interstate banking and branching by foreign banks [that] might lead to a substantial expansion of insured deposit taking by foreign banks." The report also noted that the issue was "subject to further review" reflecting an agreement to gather further evidence. In my additional views on the international banking provisions, I noted that while the committee had rejected the Treasury roll up proposal, it was retained in the case of retail deposit taking involving a handful of banks, mostly from smaller countries, which have caused no losses to the insurance fund. I also noted that this "is an issue on which additional evidence is being gathered and which will require further consideration."

The further consideration was to be based on the recommendations of the parties to whom the committee had written. I ask that the letter sent to Alan Greenspan and responses received from the various groups and agencies be printed at the end of my statement. I will summarize them briefly. Treasury opposed the subsidiary requirement. Federal Reserve Chairman Greenspan favored "maintaining deposit insurance on foreign bank deposits on the current basis." FDIC Chairman Seidman provided a staff analysis which made a series of arguments on both sides of the issue but took no position. The Bankers' Association for Foreign Trade argued that the proposal was "unnecessary and, perhaps, unwise, and could adversely impact U.S. bank operations outside the United States." The Institute of International Bankers called the proposal "unnecessary" and noted that "the global capital of the international bank would no longer stand behind these deposits, and such a requirement would be inconsistent with the practice of U.S. banks to maintain branches in other countries." The Independent Bankers Association of America supported the proposal in the interest of protecting small depositors.

I would also note that one letter was received unsolicited from a group that was obviously paying careful attention to the legislation, the European Community. Sir Leon Brittan, vice president of the Commission of the European Communities, wrote noting that EC member states impose no structural requirements on foreign bank branches that are subject to deposit insurance plans and no such requirements are planned or necessary. He urged that we dispense with this requirement. I ask that his letter also be printed in the RECORD following my statement.

The final opinion that was sought to complete the record on this matter was that of the new FDIC Chairman William Taylor. During his confirmation hearing in the Senate Banking Committee, Senator RIEGLE asked whether the best way to ensure protection of retail depositors was the subsidiary requirement in the Senate bill. Mr. Taylor responded: "I think it helps. I think it's not an absolute assurance but it helps." In the interest of providing him an opportunity to make a more thoughtful response to this question, I wrote to Mr. Taylor after the hearing asking for his specific views on the subsidiary issue. His response, which I ask be printed after the other letters, was as follows:

> With respect to the question of whether foreign banks should be required to conduct their retail deposit activities in a subsidiary bank or be permitted to continue to conduct those activities in branches, I have no preference because substantial arguments can be made in favor of either approach.

Based on this loss history and body of opinion, it seems clear to me as the bill was taken to the Senate floor that any change in this area should be studied further and the provision should be dropped from the bill. The argument for deletion became even stronger when the possibility of foreign bank expansion through interstate branching, on which the deposit insurance proposal had been premised, was eliminated from the bill by the Ford amendment. However, because it was unclear how the interstate issue would finally be resolved in conference, the deposit insurance requirement, equivalent capital and subsidiary study provisions which had all been premised on interestate branching and broader powers were retained in the bill to ensure that the Senate was in a strong negotiating position in conference.

While the provision was maintained, the one change upon which I did insist was to limit the impact of the foreign bank retail deposit provision so that current activities were held harmless. This Senator, of course, opposed the entire notion of the subsidiary requirement as unnecessary and a denial of national treatment. But, even in the event that such a requirement were to apply in the future, I was adament that it not require any restriction or roll up of current activities. I was particularly concerned that a relative handful of banks operating insured branches, employing American citizens, and causing no loss to depositors not be put out of business without a hearing. Therefore, the final managers' amendment adopted on the floor limited the subidiary requirement of future retail deposit taking and all existing insured branches were grandfathered.

In conference, with adjournment looming, the House made clear that its parliamentary position made it impossible even to consider interstate branching or matters involving multiple committee jurisdictions like my lender liability provision or fair trade in financial services. Interstate branching was therefore dropped in conference. In my view, this eliminated even the weak justification that brought the foreign bank deposit insurance provision into the bill in the first place. I therefore argued for deletion of this vestige of the broader Senate bill from any Senate offer to the House.

That advice was not heeded and the Senate proposed adoption of the sub-

sidiary requirement. This proposal was challenged in the closing minutes of the conference by Congressman WYLIE who cited the body of opinion against the provision. He asked his House colleagues to insist on the House position, that is, no subsidiary requirement. Unfortunately, the issue had not been carefully reviewed by those who would be directly affected by the provision, the administration had not alerted us to the trade policy implications of the provision, and many Members on the House side were apparently under the impression that the provision was not significant or that it was supported by the regulatory agencies.

A vote was taken by the House and in the fatigue of an around-the-clock session, the House receded to the Senate. I believed this was very unfortunate from an overall policy perspective but the full implications of this minor provision only became clear when it was carefully reviewed after the fact by agencies and interest groups that should have been more alert to it.

My greatest fear was never the provision's impact on foreign bank operations, of which retail deposits represent less than 1 percent, but on U.S. trade policy and efforts I have been pursuing with Chairman RIEGLE to open foreign markets such as the fair trade in financial services bill. Once the provision was carefully considered after the fact, these fears were realized.

As a result of its enactment, the United States will have too take a reservation from the obligations of the OECD Code on financial services and will have to take similar steps by amending its position on any financial services text that is part of a North American Free-Trade Agreement and Uruguay round. It may also create a violation of United States obligations under the United States-Canada Free-Trade Agreement. It may endanger future international liberalization in a sector that is critical to the future of U.S. competitiveness. Even worse, U.S. movement away from free right of establishment through branches may well trigger a rollback of market access for U.S. banks abroad.

The other problem that has become clear after a careful reading is that the provision is drafted in such a way as to threaten currently permissible activities for wholesale and limited branches of foreign banks. Unless the Fed and FDIC adopt a liberal interpretation of the language, any foreign bank branch with foreign currency deposits, clearing accounts, loan accounts, demand accounts for large corporate customers or accounts for foreign employees that are below, or fall below, $100,000 could be forced to set up a subsidiary or drop those accounts on the date of enactment.

This clearly makes no sense nor was it, I believe, the intent of the conferees. For my part, I obtained adoption of a grandfather clause specifically to limit the impact of the provision on existing activities. I protected existing insured branches which this provision was clearly intended to eliminate. I certainly did not do so with the intent that current wholesale branch activities, not even addressed by this provision, would be rolled back.

The problem with the provision are now being realized by others. I ask that a letter from the British Embassy to Chairman RIEGLE, which was forwarded to me by the Embassy, be included in the RECORD following my statement.

To address these problems, I entend to reassure the regulators that it was not our intention to restrict or roll up current lines of nonretail business. I understand that a number of House Banking conferees are doing likewise. It is my hope that the regulators will act accordingly in implementing the provision.

Looking to the future, I will support a technical correction in the next session to ensure that the provision causes no roll back or roll up of current foreign banks activities. In my view, if we are to continue efforts to liberalize trade in financial services and pursue the fair trade in financial services bill, it should be repealed.

The material follows:

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC, July 17, 1991.

Hon. ALAN GREENSPAN,
Chairman, Board of Governors of the Federal Reserve System, Washington, DC.

DEAR CHAIRMAN GREENSPAN: The Senate Banking Committee soon will be considering comprehensive legislation to reform our deposit insurance system and modernize our banking system. As part of that legislation, the Committee will consider whether the deposit insurance system as it applies to foreign banks requires reform. We are writing to obtain your views on a number of policy issues being discussed in the Committee.

We understand that under current law, foreign banks are required to participate in the deposit insurance system only for branches that take retail deposits and these are the only deposits in foreign banks covered by the system. Thus while domestic banks pay premiums on their whole domestic deposit base, foreign banks operating in this country are required to pay assessments only on deposits at a branch that takes retail deposits. At any location in this country where deposits only in excess of $100,000 are taken, a foreign bank does not pay any premiums while a U.S. bank does.

The legislative history of this provision indicates that the decision to require insurance at locations that take retail deposits was premised on concern "for the protection of the individual retail, not commercial, depositors." The insurance requirement provides a second layer of protection for retail deposits in insured branches, the primary security of which is the full resources of the foreign bank itself.

Legislation proposed by the Administration would, if enacted, give foreign banks the right to engage in banking through branches throughout the United States. This raises questions about whether we need to modify the rules on assessing premiums and extending deposit insurance coverage for deposit taking by foreign banks in order to ensure that U.S. depositors are adequately protected and U.S. banks are not disadvantaged compared to foreign competitors but foreign banks still receive national treatment.

Three possible modifications are under consideration by the Committee. One proposal being examined would charge deposit insurance assessments for all the domestic deposits taken by a foreign bank operating through branches that engages in retail deposit taking in any location in the United States. This appears to be a modest extension of current policy that would ensure identical treatment of U.S. and foreign banks as foreign banks expand through interstate branching. A second proposal is that deposit insurance coverage be extended and insurance premiums charged on all U.S. deposits taken by foreign banks even if they are solely wholesale. From the point of view of competitiveness, this would increase the cost of doing business for foreign banks and eliminate a competitive advantage they now enjoy over U.S. banks engaged in wholesale deposit taking. From the point of view of the insurance system, this would expand the liabilities of the system but also provide a new source of premiums to the Bank Insurance Fund.

A third proposal, aimed at ensuring that foreign banks taking retail deposits are effectively regulated to protect depositors, the communities from which deposits are taken and the insurance fund, would require that interstate retail deposit taking through branch networks across the United States be done only from a U.S.-chartered subsidiary. This proposal would ensure FDIC access to U.S.-based resources in the event of a foreign bank failure but could make it more difficult to rely on the resources of the foreign parent or the foreign government as lender of last resort.

These three proposals raise significant policy issues, and we would very much appreciate having your views on them. In your response, please address the impact the above suggested changes would have on the risks facing the deposit insurance system, competitive equity between foreign and domestic banks operating in the U.S. market, and how each proposal compares to the treatment accorded U.S. banks operating in other countries that sponsor deposit insurance funds.

Since we will be moving forward with legislation in the near future, we ask for your views on the above issues at your very earliest convenience.

Sincerely,

JAKE GARN,
Ranking Republican.
DONALD W. RIEGLE, Jr.,
Chairman.

DEPARTMENT OF THE TREASURY,
Washington, August 1, 1991.

Hon. JAKE GARN,
Ranking Republican, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GARN: The Treasury Department has carefully considered the proposals regarding foreign banks outlined in the letter of July 17 signed by you and Senator Riegle.

The first proposal, which is included in the proposed Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, would charge deposit insurance assessments for all the domestic deposits taken by a foreign bank through branches if it engages in retail deposit taking in any of its branches in the United States.

The Administration's bill did not propose changing the present deposit insurance scheme for foreign bank branches under which foreign bank branches taking only wholesale deposits could continue to benefit from an exemption from deposit insurance assessments. While your proposal would not be inconsistent with national treatment, it would increase the claims on the deposit insurance system; accordingly, the Administration prefers the existing approach, which is designed to protect retail depositors in those few foreign bank branches that accept retail deposits.

The second proposal would extend deposit insurance coverage and charge premiums on all U.S. deposits taken by foreign banks even if they take only wholesale deposits in their U.S. branches. We agree that assessing deposit insurance premiums on foreign bank branches would increase the cost of conducting wholesale banking business for foreign banks and eliminate a competitive advantage they now enjoy over U.S. banks engaged in wholesale deposit taking. However, the vast majority of foreign banks operating through branches take no retail deposits and would face increased costs with only limited benefits.

As you noted in your letter, such a policy would expand the liabilities of the deposit insurance system—considerably more than your first proposal. The Treasury Department is opposed to such an expansion of the deposit insurance system's liabilities at a time when exposure should clearly be reduced, therefore, we are opposed to this provision.

Your third proposal would require that interstate retail deposit taking through branch networks across the United States be done only from a U.S.-chartered subsidiary. The Treasury Department is opposed to requiring a subsidiary for foreign banks that only engage in commercial banking activity. The Administration proposed a subsidiary/holding company requirement for foreign banks seeking to engage in expanded activities.

This proposal could have the effect of discouraging foreign banks from engaging in retail deposit taking in more than one state. The result would be that foreign banks would concentrate their activity in a very few large states that allow multiple branches, such as New York or California. Small states could lose potential foreign bank retail lending activity.

In response to your final question, U.S. bank branches and subsidiaries participate in deposit insurance systems in Canada, France, Germany, and the United Kingdom. Participation is not mandatory in some of these systems and is generally less costly than in the United States. In Germany, where foreign banks' participation is optional, assessments are related to a bank's retail deposit base, which is very small for most U.S. banks. In France and the U.K., where foreign banks' participation is compulsory, assessments are charged following large pay-outs, although the U.K. also assesses an initial contribution to its fund upon authorization of the foreign bank's office. Japan does not currently assess deposits of foreign banks for its insurance system.

Thank you for seeking the Treasury Department's views on these important issues.

Sincerely,

MARY C. SOPHOS,
Assistant Secretary, Legislative Affairs.

FEDERAL RESERVE SYSTEM,
Washington, DC, July 29, 1991.

Hon. JAKE GARN,
Ranking Republican, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GARN: I am responding to your letter of July 17, 1991, requesting the views of the Federal Reserve on whether the deposit insurance system as it applies to foreign banks requires reform.

As you know, foreign banks currently pay assessments for deposit insurance on the deposits of individual U.S. branches that accept more than a de minimis level of deposits of less than $100,000 in size, known as retail deposits. The assessment is charged on all of the deposits of that branch, including wholesale deposits. Few foreign banks accept retail deposits and therefore few are insured by the Federal Deposit Insurance Corporation. Of 226 foreign banks with 374 branches in the United States, 29 foreign banks operate 58 insured branches. Those 29 foreign banks operate 22 additional uninsured branches in the United States that accept wholesale deposits. No assessment is generally charged, and no deposit insurance coverage is provided, on U.S. branches of foreign banks that accept only wholesale deposits.

In your letter you outline three possible modifications to the current approach to deposit insurance for foreign banks that are under consideration by the Senate Banking Committee. You ask that we address the impact of those possible changes on the risks facing the deposit insurance system, competitive equity between foreign and domestic banks operating in the U.S. market, and the treatment accorded U.S. banks operating in other countries that sponsor deposit insurance funds.

In general, the Federal Reserve favors maintaining deposit insurance on foreign bank deposits on the current basis. The current system, which requires deposit insurance only on branches engaging in a retail deposit business, was designed to protect individual depositors with smaller balances who presumably would not be able to assess adequately the risks of dealing with a foreign bank. It was not designed to bring the risks of all foreign bank operations in the United States, a large part of which are oriented toward international business, within the U.S. safety net.

While it is important that U.S. authorities supervise the operations of foreign banks in the United States, it should be clear to large depositors that ultimate responsibility for the safety and soundness of foreign banks rests with the home country authorities. In particular, the Federal Reserve has stressed the need to assess the financial condition of the foreign bank as a whole and the comprehensiveness of home country supervision. Imposing deposit insurance on all foreign branch business risks implicitly transferring overall responsibility for foreign branch from the home country to the United States, a burden that we believe should not be assumed.

With respect to competitive equity between foreign and domestic banks operating in the U.S. market, we are aware of no convincing evidence that the branches of foreign banks have been able to price products in the U.S. market below prices offered by domestic institutions because foreign banks do not have to pay insurance assessments. Moreover, U.S. banks may in some circumstances have lower funding costs overall because of their greater access to the large U.S. retail deposit base.

Finally, the structure of insurance coverage for deposits in branches of U.S. banks abroad varies substantially from country to country in the Group of 10 countries. In general, the systems were designed to emphasize the protection of small deposits.

I hope this response will be helpful in your deliberations.

Sincerely,

ALAN GREENSPAN.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, July 29, 1991.

Hon. JAKE GARN,
Ranking Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR GARN: Thank you for your joint letter with Chairman Riegle requesting the views of the Federal Deposit Insurance Corporation on modifications of federal deposit insurance applicable to United States branches of foreign banks.

Your letter indicates that three possible modifications of the deposit insurance system as it relates to foreign banks are being considered in conjunction with proposed legislation that would enable such banks to establish branches throughout this country. We are pleased to enclose our analysis of the policy implications of the possible modifications to which you refer.

We hope that this information is helpful. If you have any further questions, please let us know.

With best wishes.

Sincerely,

L. WILLIAM SEIDMAN,
Chairman.

RESPONSE TO REQUEST BY CHAIRMAN RIEGLE AND SENATOR GARN FOR COMMENTS ON POSSIBLE MODIFICATIONS TO DEPOSIT INSURANCE APPLICABLE TO U.S. BRANCHES OF FOREIGN BANKS

Branches and agencies of foreign banks now account for about 18 percent of the total banking assets in this country, reflecting a rapid expansion in operations and growth in market share since passage of the International Banking Act of 1978. The majority of foreign banks with United States branches do not engage in domestic retail business. Most foreign banks that operate a retail deposit business in the United States do so through subsidiary banks that are chartered here. The current attractiveness of the United States market for foreign banks appears to lie in the wholesale sector.

One proposal would require that insurance coverage be extended to, and that assessments be paid on, all of the domestic deposits, both wholesale and retail, held by United States branches of foreign banks. At present, insurance extends to, and assessments are paid on, only the deposits held by those branches of a foreign bank that take domestic retail deposits. A second proposal is that deposit insurance coverage be extended to, and assessments be collected on, all domestic deposits of United States branches of a foreign bank even if none of the branches takes any domestic retail deposits.

Either of these two proposals would put foreign banks operating in the United States on a more equal footing with domestic banks—which are required to pay assessments on all of their domestic deposits, both wholesale and retail. The first proposal might not significantly increase assessment income, since foreign banks with United States branches that take domestic retail deposits could choose to cease doing so in order to avoid the cost increase.

It is difficult to predict the effect that charging assessments on the wholesale deposits of American branches of foreign banks would have on the wholesale market or to estimate the increased assessment income that could be expected. It appears that, in many cases, assessing premiums on wholesale deposits would be contrary to the treatment accorded United States banks' wholesale deposits abroad.

The first two proposals, but especially the second, could be expected to result in a significant increase in insurance coverage of foreign bank offices in the United States. In the event that either proposal is enacted, it is absolutely vital that the FDIC be provided ultimate authority to approve or deny deposit insurance.

Both proposals would expand deposit insurance protection and thus would increase potential claims on the Bank Insurance Fund, which is extremely vulnerable and is, of course, our primary concern. Supervision and regulation of branches of an entity headquartered abroad gives rise to unique problems. For example, communicating with, and achieving corrective action of problems through, a principal office located overseas would be difficult at best. There are additional risks such as potential problems in claiming assets funded by insured liabilities, since collateral assets may be located abroad.

The third proposal would require that interstate retail deposit taking by a foreign bank be done only through the offices of a subsidiary bank chartered in the United States. This requirement probably would not have a significant impact since, as indicated earlier, most foreign banks that operate a retail deposit business here do so through such a subsidiary, which is preferable both from the standpoint of supervision and in terms of managing the risk to the Bank Insurance Fund. However, such a requirement would be contrary to the treatment accorded United States banks in many countries where they are permitted to operate at retail through branch offices.

Lastly, we have been asked to comment on the payment by United States banks of deposits in foreign branches when the assets of those branches have been frozen or expropriated by a foreign government. Section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. §1813(l), defines the term "deposit" for purposes of the Act to exclude any obligation of a bank or savings association which is payable only at an office located outside the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands. Deposits which are booked and payable only at an overseas branch of an insured financial institution are not reported as deposits for assessment purposes and are not considered to be insured.

Several recent cases have held that the home office of a bank is liable for payment of overseas deposits if they could not be repaid at the foreign branch where they were made. Typical cases include Chase Manhattan Bank v. Vishipco Lines, 660 F.2d 854 (2d Cir. 1981), in which Chase was required to pay a deposit made in its Saigon branch after the branch was closed because of approaching Vietcong, and Wells Fargo Asia Ltd. v. Citibank, N.A., 110 S. Ct. 2034 (1990), in which Citibank was required to pay a deposit made in the Philippines after a Philippine government decree prevented payment from the Bank's Philippine assets.

This line of cases casts doubt on the proposition that any deposit truly may be payable only outside the United States, its territories and possessions. Because such deposits are not subject to assessments and, in all likelihood, are not regarded by either the bank or its foreign depositors as being insured, the Federal Deposit Insurance Act should make clear that such deposits are not insured. We therefore suggest enactment of the attached amendment.

FEDERAL DEPOSIT INSURANCE ACT

Subparagraph (A) of Section 3(*l*)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)(5) is amended to read:

(A) any obligation of a bank or savings association which is carried on the books and records of an office of such bank or savings association located outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands unless (i) such obligation would be a deposit if it were carried on the books and records of the bank or savings association, and payable at, an office located within the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of such bank or savings association located within the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

BANKERS' ASSOCIATION
FOR FOREIGN TRADE,
Washington, DC, July 26, 1991.

Re foreign banks and deposit insurance.

Hon. DONALD W. RIEGLE, Jr., *Chairman*
Hon. JAKE GARN,
Ranking Republican, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN RIEGLE AND SENATOR GARN: On behalf of the Bankers' Association for Foreign Trade ("BAFT"), I would like to respond to your joint letter of July 17, 1991, requesting BAFT's views on three proposals to modify the application of federal deposit insurance to the operations of foreign banks in the United States.

As you know, BAFT's voting membership includes virtually all U.S. banks with significant international and trade banking operations. BAFT's U.S. members thus comprise those U.S. banks that are most active overseas and are the principal competitors of foreign banks both in the United States and abroad.

In evaluating the three proposals you presented, we have been principally guided in our analysis by the principle of national treatment toward foreign banks, a principle embodied in the International Banking Act of 1978 ("IBA"), because it promotes competitive equality in the United States and protects U.S. banks from possible retaliatory actions outside the United States.

BAFT agrees with your basic premise that legislation giving foreign banks the right to establish branches throughout the United States raises important questions about the deposit insurance coverage and assessment of such operations. There is, of course, a competitive issue, as U.S. banks will be paying deposit insurance premiums on deposits at their multistate branches, premiums that impose very substantial competitive costs. There is also the question of risks to the deposit insurance fund of insuring deposits at U.S. operations of banks based outside the United States. Finally, there is the issue of maintaining important operational or competitive options for U.S. banks outside the U.S. In this regard, any actions taken by the United States Government on the treatment of foreign banks in this market may provoke similar responses by foreign governments vis-a-vis the operations of U.S. banks outside the United States.

Evaluating your three proposals in terms of the above issues and overall consistency with national treatment, BAFT supports your first proposal, but has serious concerns with your second and third proposals.

Under your first proposal, if a foreign bank decided to take advantage of new interstate banking powers and to establish branches in more than one state, all of its branches would have to be FDIC-insured and assessed if any of such branches accepted retail deposits. We believe this position is consistent with national treatment, because even if U.S. banks accept only a small amount of retail deposits, they must pay assessments on all of their domestic deposits. If a foreign bank chooses to engage in interstate retail deposit-taking through its branches, it should be subject to the same assessment structure as U.S. banks. This proposal also guards against any confusion as to deposit insurance coverage by retail depositors, which could occur if some branches were insured and some branches were not insured. In this regard, FDIC regulations already address this issue in the intrastate context by requiring a foreign bank to insure all its branches in the same state, if any of such branches accepts retail deposits. The first proposal should also not present undue risks to the FDIC, since its current rules for insuring retail branches of foreign banks appear to have worked well. Finally, by acknowledging that foreign bank branches may engage in retail operations in the United States, this proposal allows foreign branches of U.S. banks to maintain or seek similar retail opportunities in markets abroad.

The second proposal—insuring and assessing deposits at all branches of foreign banks even if none of such offices engage in retail activity—was previously rejected by Congress in the IBA as being inconsistent with national treatment, since deposit insurance is intended to protect retail, not wholesale, customers. The FDIC also had substantial objections in 1978 to insuring strictly wholesale operations due to the risks that might be involved for the FDIC fund. We believe both of these reasons remain compelling today. Also, we are concerned that such proposal could provoke retaliation against U.S. bank wholesale operations outside the United States.

Concerning your third proposal, which would require foreign banks to conduct all retail operations through U.S. subsidiary banks, we believe such an approach is unnecessary and, perhaps, unwise, and could adversely impact U.S. bank operations outside the United States. Taking our last point first, U.S. banks would like to maintain the option, which they have or would like to have in many markets abroad, of conducting retail activities through branches or subsidiaries. A subsidiary "rule" in the United States could cause foreign governments to impose a retail subsidiary rule on U.S. bank branches outside the United States, which could deny them important competitive opportunities in existing or new foreign mar-

kets. Mandatory use of a subsidiary also appears unnecessary, since your first proposal ensures national treatment without generating such competitive risks outside the United States. In addition, to the extent U.S. rules require foreign bank activities to be conducted in subsidiary banks, the overall risk to the FDIC fund from such operations increases, since the U.S. Government ends up being responsible for the solvency regulation of such separate subsidiary. To the extent foreign banks conduct U.S. activities through branches, the ultimate solvency of such offices is the responsibility of the home country supervisor/central bank. In the current environment, it would not seem advisable to shift more solvency regulation *and* responsibility from foreign supervisors to U.S. government agencies.

We greatly appreciate this opportunity to comment and hope these views have proved useful to your legislative efforts.

Sincerely,

M. CONDEELIS,
Executive Director.

INSTITUTE OF INTERNATIONAL BANKERS,
New York, NY, July 29, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Hon. JAKE GARN,
Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC.

DEAR CHAIRMAN RIEGLE, AND SENATOR GARN: I am writing in reply to your letter, dated July 17, 1991, in which you requested the Institute's views on three proposals to modify the deposit insurance system as it applies to international banks.

The International Banking Act of 1978 ("IBA") required federal deposit insurance for international bank branches that take retail deposits but did not mandate deposit insurance for international bank branches that take only wholesale deposits. This approach takes into account the fundamental difference between wholesale depositors and individual, retail depositors for whom federally insured deposit protection was originally designed. We believe this system for deposit insurance for international banks has worked well as it applies to the limited number of international banks that have retail branches.

Your first proposal would expand deposit insurance coverage to all U.S. deposits of an international bank with retail deposit taking branches. We acknowledge that when an international bank seeks to expand interstate through insured retail branches it should be required to insure all its branches. Imposing this requirement on those institutions which have retail branch activities, however, could disrupt ongoing operations and possibly decrease banking services to the customers they serve. We suggest that these banks be allowed to continue operating as currently permitted unless they decide to expand interstate by establishing one or more retail branches under the new authority of S. 543.

Your third proposal would require an international bank to conduct interstate retail deposit taking through a U.S. subsidiary bank. We believe such a requirement is unnecessary. Although the Federal Deposit Insurance Corporation ("FDIC") expressed a preference for an incorporated bank at the time of enactment of the IBA, we believe the FDIC has successfully supervised the insured retail branches of international banks without significant problems or losses to the system. A disadvantage of incorporation is that the global capital of the international bank would no longer stand behind these deposits, and such a requirement would be inconsistent with the practice of U.S. banks to maintain branches in other countries.

The remaining proposal, number two in your letter, would expand deposit insurance coverage to all U.S. deposits of international banks even if the bank is engaged solely in wholesale deposit taking. This approach would be a major departure from the IBA and would bring within the safety net the vast majority of international banks currently operating in the United States. Such a change in the deposit insurance system for international banks could fundamentally alter the role of the United States as a center for international banking activities. A substantial portion of wholesale banking business would likely shift to various markets outside the United States, which could have a significant adverse impact on Atlanta, Chicago, Houston, Los Angeles, Miami, New York and other major cities.

Perhaps more importantly, the expansion of the liabilities covered by FDIC should be carefully examined before extending the U.S. government guarantee to the operations in the United States of international banks from over 60 countries. As Federal Reserve Chairman Greenspan observed in a related context in testimony before your Committee, by compelling deposit insurance wholesale branch depositors would increasingly look to the U.S. safety net rather than the international bank itself in the event of problems.

We appreciate the opportunity to comment on the proposals outlined in your letter.

Very truly yours,

LAWRENCE R. UHLICK,
Executive Director and General Counsel.

INDEPENDENT BANKERS ASSOCIATION OF AMERICA,
Washington, DC, July 25, 1991.

Hon. DONALD W. RIEGLE, Jr., *Chairman,*
Hon. JAKE GARN, *Ranking Republican,*
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN RIEGLE AND SENATOR GARN: The Independent Bankers Association of America (IBAA) appreciates the opportunity to comment on the relationship of the deposit insurance system as it applies to foreign banks. The IBAA is the only national trade association which exclusively represents the interests of the nation's community banks.

It is the position of the IBAA that foreign banks that take deposits, wholesale *and* retail, in the United States should be required to abide by the same rules as domestic banks. It is critical that foreign banks are regulated effectively to ensure that depositors are accorded the same protection that they would receive from a domestic bank. Interstate deposit-taking should be done only through a U.S.-chartered subsidiary that is subject to the same rules and regulations as domestic banks.

With consumer confidence in the banking system at an all time low, permitting foreign banks to gather deposits from the U.S. without providing our citizens the protections that they are afforded by our banking system would only create more uncertainty. Without subjecting foreign banks doing business in this country to the same rules as domestic banks, we are concerned that the average consumer may not know that they are dealing with a foreign bank. This could place the consumer in the position of having to make an uneducated decision about their deposits.

The recent worldwide depositor crisis caused by the closure of BCCI has shown that deposit insurance is important. The *Washington Post* noted that the U.S. deposit insurance system "is part of the reason that U.S. banking regulators have been able to close about 200 banks in each of the past several years without an outcry from bank customers, while the Bank of England's action against BCCI has provoked protests from London to Hong Kong."

Assessing premiums for both wholesale and retail deposits is an important aspect of depositor protection. The wholesale deposit is considered in excess of $100,000. We believe that this figure is far too low. Retirees with, for example, $110,000 might be tempted to put their life savings or lump-sum pension payouts into the wholesale bank without understanding they are not insured. This is not acceptable.

Protection of the U.S. depositor must be the focus of this debate. Premium income generated from assessing the deposits of foreign banks may possibly be significant, but it should be considered the price a foreign bank pays to collect deposits in the United States.

We would be pleased to answer any further questions you may have. Thank you for this opportunity to share our views.

Sincerely,

DAVID BALLWEG,
President.

VICE-PRESIDENT OF THE COMMISSION,
OF THE EUROPEAN COMMUNITIES,
Brussels, September 17, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR RIEGLE: I would like to offer my congratulations on the successful markup of the US banking reform legislation by your Committee, which obviously brings reform a step nearer to the statute book. The European Community has also noted with satisfaction that the Committee took the view that an automatic roll-up requirement of branches of foreign banks was not necessary.

There is, however, widespread concern in Europe that roll-up seems to be reintroduced by the language requiring any foreign bank with one or more insured branches to establish a subsidiary (or subsidiaries) to conduct its insured deposit taking activities. For a significant number of European banks this would amount to a requirement to convert existing branches to subsidiaries, thereby undermining the Committee's position against such a roll-up.

You may find it useful to have an overview of the position as regards deposit insurance in the European Community. I have therefore attached to this letter a summary table setting out the situation in each of the Member States.

As you will see from this table, foreign bank branches operating in the European Community are covered by existing schemes in nearly all Member States—there is no requirement in any Member State that those branches should be established as subsidiaries. The obligation to pay insurance assessments is not affected by the different types of organizational structure used by banks; and there is no reason why it should be.

We in the European Commission will shortly be putting forward proposals for a harmonized system of deposit insurance

throughout the Community. There is no intention that any such scheme should require branches of foreign banks to be converted into subsidiaries. I would therefore ask you to reconsider whether such a requirement could not be dispensed with in the United States' own bank reform legislation.

As you know, the European Commission strongly supports the general open-market direction of the banking reform legislation now being shaped by Congress. I am confident that our concerns can be met without adversely affecting the positive, liberalizing features of the reform process. I shall be in Washington from 22–24 September and if there is an opportunity to discuss matters of common interest arising out of the bank reform legislation I would naturally welcome an opportunity to meet you.

I am sending a copy of this letter to Senator Garn.

LEON BRITTAN.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, November 13, 1991.

Hon. JAKE GARN,
Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, United States Senate, Washington, DC.

DEAR SENATOR GARN: Thank you for your letter of November 5, 1991 requesting the views of the Federal Deposit Insurance Corporation concerning your proposed amendment to section 305(c) of S. 543.

I support your proposed amendment. The original language of section 305(c) appears to make automatic deposit insurance coverage for retail deposits of domestic branches of foreign banks. Your proposed amendment would make clear that foreign banks must apply to the FDIC for deposit insurance covering those deposits. Your amendment therefore would require foreign banks to be subject to the same standards that apply to domestic banks and would provide the FDIC with leverage to assure that foreign bank branches are being operated in a safe and sound manner.

With respect to the question of whether foreign banks should be required to conduct their retail deposit activities in a subsidiary bank or be permitted to continue to conduct those activities in branches, I have no preference because substantial arguments can be made in favor of either approach.

I appreciate the opportunity to comment on your proposed amendment. If you have any further questions, please let me know.

Sincerely,

WILLIAM TAYLOR,
Chairman.

BRITISH EMBASSY,
Washington, DC, Dec. 12, 1991.

Hon. DONALD W. RIEGLE,
Senate Dirksen Office Bldg., Washington, DC.

DEAR SENATOR RIEGLE: We understand that the Federal Deposit Insurance Corporation Improvement Act of 1991, approved just before Congress adjourned in late November, added a new and potentially very damaging provision affecting foreign bank branches in the United States. The British Government hopes that you may be able to confirm that the new Section 214(a) will be interpreted in the way in which Congress no doubt intended so that the current arrangements for foreign bank branching in the U.S. are not disrupted.

The new Section 214(a) appears to prohibit international banks from accepting or maintaining accounts having balances of less than $100,000 except through a U.S. subsidiary. The Section has caused great concern to the foreign banking community who had understood that the change was meant only to affect the taking of insured retail deposits. Indeed, it appears that a careful reading of the new section taken in conjunction with the International Banking Act supports that interpretation. Nevertheless, it seems that on some interpretations the new section could be taken to prohibit the acceptance by wholesale branches of any deposits of less than $100,000 made by any customers of foreign banks. This would clearly be disruptive of the normal business arrangements of foreign bank branches and we are sure that it is unintended. Indeed, a reading of the House-Senate conference discussions suggests that wholesale bank branches should not be affected at all.

The British Government is concerned that the enactment of the legislation will lead to immediate, costly and unintended difficulties for the business of the foreign banking community in the United States and to normal commercial payment flows both within the U.S. and internationally. I understand that you appreciate these concerns. We should be very grateful, therefore, if steps could be taken to clarify that Section 214(a) is not intended to apply to the non-retail deposit activities of foreign bank branches.

If necessary, we hope that you will consider early legislation to put right the unintended effect of Section 214(a). In the meantime, I hope that you will join with us in urging the regulatory authorities to delay implementing changes to the existing regulatory structure.

Yours sincerely,

ROBIN RENWICK.•

INTRODUCTION OF S. 2112—LIMITING DIVERSITY OF INFORMATION SERVICES

• Mr. LOTT. Mr. President, S. 2112 is special-interest legislation of the first order, a nice little carve-out for newspaper publishers. Sponsors of S. 2112 and the newspaper publishers they seek to protect are saying that the bill is necessary to promote diversity in the information services market but their message has a hollow ring, that is, promote diversity by limiting it.

The bill would essentially reimpose the information services restriction on the Bell companies, and reverse the 5-year court process culminating in the decision to free the Bells, a process driven in large part by the compelling and persuasive public interest arguments in support of Bell Co. entry into information services.

The local Bell telephone companies serve 75 percent of the Nation's telecommunications users. During the nearly 10 years the information services restriction had been in effect there was little development of an information services market beyond large business users. In my home State of Mississippi and in many other rural areas of the country there has been little or no attempt to market these services. The implication is fairly simple and straightforward; the local telephone companies are well positioned to develop a mass market for information services and unless the Bell companies are in the information services game in a meaningful way more people than not will go without the benefit of these services. What we have in effect today, because of the irrational effects of the MFJ restrictions, is a case of the haves versus the have-nots in terms of access to information services. S. 2112 throws a smokescreen up in an attempt to blur our perception of these events and where we are in this debate.

Since the Bells were freed to enter information services they have responded energetically. Their involvement includes information product and service applications in areas of health care, small business, and education. Many of their efforts have involved cooperation or partnerships with other companies including the newspapers. The market is ripe for the next generation of information services. The American people are waiting. Rather than stand in the way, the newspaper industry should look for opportunities to capitalize on the information services revolution RCH participation will stimulate.•

COLLOQUY ON MASSACHUSETTS INTERSTATE HIGHWAY CONSTRUCTION FUNDING

• Mr. KENNEDY. Mr. President, my colleague from Massachusetts, Senator KERRY, and I engage the chairman of the Transportation Subcommittee, Senator MOYNIHAN, and the subcommittee's ranking Republican member, Senator SYMMS, in a colloquy concerning the Intermodal Surface Transportation Efficiency Act of 1991.

First, I would like to commend Senators MOYNIHAN and SYMMS for their leadership and extraordinary efforts in securing the passage of this critical transportation initiative. This act is clearly one of the most significant public works and infrastructure measures ever enacted by any Congress. It sets the course for a cleaner, more efficient, and safer transportation system as we move into the 21st century, and it will provide an enormous boost to the economy in Massachusetts and the Nation, at a time when this is so urgently needed.

Due, however, to the enormous complexities involved in writing legislation of this magnitude and the necessity for bringing this measure to the Senate floor before Congress adjourned for the year, it has come to our attention that a matter of vital importance to Massachusetts was inadvertently left out of the conference report. This matter concerns section 1020 of title I of the act concerning the period of availability for funds apportioned for Massachusetts for interstate construction.

As the distinguished chairman and ranking minority member are aware, the $2.55 billion in interstate construction funds apportioned under this bill

for Massachusetts is vital for completing one of the last remaining segments of this country's Interstate Highway System, the Central Artery-Third Harbor Tunnel, located in downtown Boston. By including these funds, the conferees have recognized the importance of upgrading and improving what is now the single most dangerous and congested stretch of the entire Interstate Highway System. My understanding is that these funds were intended to be made available until expended, even though the conference agreement is not as clear as it could be on this point.

Would the chairman and ranking Republican member agree that it was the intent of the conferees to include language in section 1020 of the conference report to ensure the interstate construction funds apportioned for Massachusetts between October 1, 1991, and October 1, 1995, remain available until expended?

Mr. MOYNIHAN. Yes, it was the intent of the conferees to permit Massachusetts to retain, until expended, the interstate construction funds apportioned to it between October 1, 1991, and October 1, 1995, and I thank the Senator from Massachusetts for bringing this oversight to my attention.

Mr. SYMMS. I concur in the statement of the Senator from New York.

Mr. KERRY. Would the distinguished chairman and the ranking Republican member further agree and give assurances that the conferees will act quickly to include the requested language in a package of technical corrections?

Mr. MOYNIHAN. Yes, I can assure the Senators that we will move as expeditiously as possible to adhere to the original intent of the conferees and correct this oversight, thereby permitting Massachusetts to retain, until expended, all sums apportioned to it for interstate construction under the Intermodal Surface Transportation Efficiency Act of 1991.

Mr. SYMMS. The Senator from New York has accurately stated our intention.

Mr. KENNEDY. I thank the Senators for their remarks, and for their support on this important issue, and I again congratulate them for their achievement getting this far-reaching transportation measure enacted.

Mr. KERRY. I also would like to thank the distinguished chairman and ranking Republican member of the subcommittee for their great assistance and their leadership.●

ORLANDO, FL, MAGLEV PROJECT AND ITS INCLUSION IN THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

● Mr. GRAHAM. The Intermodal Surface Transportation Efficiency Act of 1991 includes a $97.5 million authorization for land and right-of-way acquisition and guideway construction in Orlando, FL. This authorization is in section 1107 of the bill. In light of the interest I have expressed to the Senate Committee on Environment and Public Works, I assume that this authorization is for the magnetic levitation project connecting the Orlando International Airport with the Central Florida Tourist Center at International Drive. Is that the Chairman's understanding?

Mr. BURDICK. Yes; it was the intent of the conferees that the $97.5 million authorization for Orlando, FL, be for land and right-of-way acquisition, and guideway construction for the maglev project.●

JOINT STATEMENT ON SYSTEMIC RISK EXCEPTION TO LEAST-COST RESOLUTION FDICIA

● Mr. RIEGLE. Mr. President, I introduce, for the RECORD, the following statement which has been prepared by House Banking Committee Chairman HENRY GONZALEZ, Congressman BRUCE VENTO, and myself, on the systemic risk provisions of section 141 of S. 543, the Federal Deposit Insurance Corporation Improvements Act of 1991.

THE FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

On November 27, 1991, the House and Senate adopted the conference report on S. 543, the Federal Deposit Insurance Corporation Improvement Act of 1991. Time did not permit filing a detailed explanation of the bill with the conference report. Accordingly, we wish to clarify the systemic risk exception in section 141.

Section 141 requires the FDIC to resolve depository institutions at the least possible long-term cost to the deposit insurance fund. Section 141 also prohibits the FDIC, after December 31, 1994, from protecting uninsured depositors or nondepositor creditors at the expense of any deposit insurance fund.

Section 141 gives the Secretary of the Treasury limited authority to make exceptions to those rules if compliance "would have serious adverse effects on economic conditions or financial stability" and assistance or other action by the FDIC would avoid or mitigate those effects. The Secretary can make exceptions only in consultation with the President, on the written recommendation of at least two-thirds of the members of the FDIC Board and two-thirds of the members of the Federal Reserve Board.

The systemic risk exception now in section 141 originated in section 220 of the Senate bill. The Senate Banking Committee's report on S. 543 described the predecessor provision as "a narrow systemic risk exception for those rare instances in which the failure of an institution could threaten the entire financial system." S. Rep. No. 167, 102d Cong., 1st Sess. 45 (1991). In the House Banking Committee's bill, section 141, relating to least-cost resolution, did not contain a systemic risk exception, but section 142, restricting advances by the Federal Reserve banks, did contain such an exemption. H. Rep. No. 157, pt. 1, 102d Cong., 1st Sess. 22–27 (1991). The conferees included the systemic risk exception in section 141, but tightened it by making a written recommendation by the FDIC Board a precondition for any systemic risk exception. The exception in section 142 of the House bill was dropped.

The systemic risk exception is not intended to perpetuate the practices commonly known as "too big to fail"; the legislation responds to and largely ends those practices. Section 141 adopts a stringent least-cost test, requiring the FDIC to evaluate alternative resolution approaches rigorously and pursue the approach with the least possible long-term cost. The FDIC is no longer free to pursue a more costly approach simply because it is less costly than liquidation, nor can the FDIC use hazy, informal cost comparisons. Section 141 also repeals the "essentiality" exception, which made even the less-than-liquidation test inapplicable to an institution that the FDIC determined to be essential to its community. Section 143 contains safeguards designed to keep discount-window lending by the Federal Reserve banks from being used not simply to cover temporary liquidity needs but as a substitute for FDIC action. Other provisions of the legislation reinforce these reforms. Section 308 and subtitle IV–A are intended to reduce systemic risk. Prompt regulatory action under section 131 applies to large and small institutions alike.

The systemic risk exception itself is narrowly drawn, with several layers of safeguards against misuse. It is intended only for those rare instances in which the failure of an institution could threaten the entire national financial system. The two Banking Committees must be notified promptly of any systemic risk determination.

Section 141—including the least-cost resolution requirement and the post-1994 prohibition against protecting uninsured depositors or nondepositor creditors—fully applies to open-bank assistance. Moreover, such assistance is permissible under the systemic risk exception only if it meets the stringent standards for that exception.●

S. 543, THE FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT

● Mr. GARN. Mr. President, as you know, the Federal Deposit Insurance Corporation Improvement Act is presently awaiting signature of the President. This act requires and encourages the banking agencies to pursue a variety of goals in resolving troubled institutions, and gives the Federal Deposit Insurance Corporation special responsibilities in implementing its objectives.

In specific situations, some of the goals found in the act may conflict. I want to make it clear that Congress relies on the banking agencies to exercise their best judgment in balancing those objectives.

No bank resolution strategy will please everyone; many will please no one. The President appointed, and this body confirmed, the heads and members of the boards of the bank regulatory agencies. By so doing, we expressed our confidence in their ability to make the best choices. This act should not be interpreted as preventing them from creatively and constructively fulfilling their assigned respon-

sibilities. I believe that this is worth emphasizing in light of the difficulties the banking industry and the general economy currently face.

Mr. President, I would also like to make some comments about some of the specific provisions in the act.

Section 105 of the act permits the FDIC to borrow from certain members of the bank insurance fund. This new source of borrowing for the FDIC pertains to the FDIC's general borrowing on behalf of the bank insurance fund. It does not pertain to the FDIC's authority to enter into bank assistance transactions to resolve bank failures. This new authority is intended to be in addition to and not a limitation on the FDIC's authority under sections 11 and 13 of the Federal Deposit Insurance Act.

Section 123 of the act sets forth standards for the FDIC to follow in disposing of assets of failed institutions, including the requirement that the FDIC promote competitive bidding. This provision is intended to apply to the FDIC's liquidation operations. The FDIC's resolution transactions, in contrast, are governed by the least-cost provisions, and the FDIC's mandate is to use whatever competitive bidding and negotiation process best effectuates those provisions.

In section 131, the term "capital distribution" should be broadly construed. For example, a capital distribution should include any transaction that the appropriate Federal banking agency or the FDIC determines to be a distribution of capital.

Section 131 also requires the establishment of benchmark levels of risk-based capital and leverage limits at which depository institutions will be considered to be well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized. Each banking agency, in consultation with the FDIC, must also establish one or more benchmark levels at which institutions are critically undercapitalized. In particular, each agency must establish a ratio of tangible equity to total assets at which an institution is critically undercapitalized.

These benchmark capital levels, which are to be established for the purpose of prompt corrective action, are not intended to supersede the capital standards specifically imposed on savings associations by FIRREA. Thus, the regulators of savings associations—the OTS and the FDIC as backup regulator and insurer—are expected to implement all of the prompt corrective action requirements of section 131 in a way that is consistent with FIRREA, which remains in force except to the extent explicitly amended by the Federal Deposit Insurance Corporation Improvement Act of 1991.

Section 131 also provides the primary Federal regulator with discretion to take other more appropriate action in lieu of appointing a receiver for an institution that is failing to meet its critical capital level, provided that the institution meets certain criteria designed to ensure its continued viability and the FDIC concurs in such decision.

In this area, it is critical that the regulator be given sufficient flexibility to consider all available alternatives that could save taxpayer money without increasing risk to the insurance fund. This measure provides significant regulatory discretion in cases where an institution is in compliance with an approved capital plan, has a sustainable upward trend in earnings, and is reducing its nonperforming assets. These criteria ensure that if a decision is made to forgo appointing a receiver for an institution that may have a realistic opportunity for recovery, the institution will not incur additional losses that would be borne by the taxpayer. Of course, it is not intended that this provision affect other provisions of this act that would provide the banking agencies additional flexibility to deal with weak institutions before they reach the critical capital level if other grounds for appointment of a conservator of receiver exist.

Section 131 also provides that a "less than satisfactory" rating with respect to assets, management, earnings, or liquidity, in the most report of examination, provides a basis for the appropriate banking agency to deem the institution to be engaging in an unsafe or unsound practice. This provision gives the regulators additional authority and does not limit the existing bases upon which the regulator can make a finding that an institution is engaging in an unsafe or unsound practice. Further, the phrase "most recent report of examination" should not be interpreted as requiring the termination of an enforcement action based solely upon the insurance of a subsequent report of examination.

Finally, section 131 includes corrective actions that the appropriate Federal banking agency must or may take, depending on the level at which the entity it regulates is capitalized. Where the board of directors and management of a depository institution or its holding company act to implement an agency directive under this section, those actions are fully consistent with and in furtherance of those persons' fiduciary duties.

Section 141 states that the FDIC, in determining the least costly resolution approach, is to use a cost evaluation based on its expected overall expenditures and payments on obligations. The FDIC must also factor in its expected return on or redemption of capital instruments that it purchases, pursuant to the sense-of-the-Congress resolution on early resolution of cases. In all instances, the requirement is that the FDIC develop the fairest and most accurate overall cost of each transaction in order best to compare alternative resolutions.

Section 141 of the act also requires the FDIC, when it provides assistance to an open institution, to make a determination with the institution's primary Federal regulator whether the institution's management has been competent and has not engaged in violations of law. That determination must be made as to former management who are retained by the assisted institution, if any. As the sense-of-the-Congress resolution on early intervention provides, members of former management as to whom the necessary determination cannot be made should ordinarily not be retained by the assisted entity.

Section 475 of the act authorizes each appropriate Federal banking agency to determine the amount of readily marketable purchased mortgage servicing rights that may be included in the capital required of the institutions it regulates, subject to certain discounting and valuation requirements. Each appropriate Federal banking agency's authority to make this determination includes the authority to define the terms contained in section 475.

Finally, Mr. President, I would like to take this opportunity to repeat comments that I made in the conference committee that reported out the Federal Deposit Insurance Corporation Improvement Act of 1991, comments that I believe will be useful in making clear the intended effect of this important provision of this legislation.

In the Senate Banking Committee, I was the sponsor of the provision that was ultimately adapted as section 471 of the act. The purpose of section 471 is to address a serious problem that has emerged since we enacted FIRREA in 1989. In FIRREA, we created the Resolution Trust Corporation and mandated it to maximize the return from the sale of the assets of failed thrift institutions. To ensure that the Resolution Trust Corporation [RTC] was able to carry out this mandate, we gave the RTC broad-ranging powers, including the power to transfer any asset of a failed institution "without any approval * * * or consent with respect to such transfer."

In order to be able to sell such assets at the best possible price, the RTC must not only be able to transfer them without obtaining any third-party consents, as FIRREA already provides, but it must also be able to provide assurance that the asset will have value in the purchasers' hands. If the asset is a contract for services, it will obviously have little or no value if the service provider is free to arbitrarily terminate the contract following its transfer. It is this issue that section 471 resolves. It establishes the right of anyone to whom the RTC sells such an asset which, as the Senate Banking

Committee report noted, may take the form of rights under contracts and membership rights in associations, service corporations, and the like to bring suit to enforce the rights that it has purchased. The provision includes one exception: When the purchaser itself has failed to comply with a material term or condition that applied to the thrift institution that originally owned the servicing rights.

I was fully cognizant, as were the conferees, of the applicability of this provision to a dispute that currently exists between Sears, Roebuck and the Visa credit card organization, which has until now refused to allow Sears to exercise Visa membership rights that it purchased from the RTC. Under this provision, Sears is entitled to enforce those rights, unless the exception that I mentioned earlier applies.

I understand that there are antitrust claims that have been asserted by Visa in pending litigation between Sears and Visa arising from this dispute. As I stated in a written colloquy with Senator METZENBAUM, which I submitted for inclusion in the CONGRESSIONAL RECORD on November 27, this provision does not prejudice any such claims, because this provision is not about antitrust claims. If Visa, or anyone in a similar position in the future, believes that it has grounds under the antitrust laws to challenge someone's acquisition of servicing rights from the Resolution Trust Corporation, that service provider continues to have whatever right it has before the enactment of this legislation to file its own lawsuit and to attempt to persuade a court of law that the acquisition of those rights was illegal. But until an appropriate court determines that the service provider's claim is valid, the purchaser is entitled to enjoy fully its rights under the service contract to enforce them. This provision makes it illegal for the service provider to simply unilaterally refuse to provide services for any reason, except in the one limited circumstance that I referred to earlier.

I hope that this makes clear the intended effect of this important provision.●

FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

● Mr. SANFORD. Mr. President, I have a few comments about an aspect of the recently passed banking bill, S. 543, the Federal Deposit Insurance Corporation Improvement Act of 1991. I was very pleased that the conference report on this bill included language that the Senate Banking Committee included at the behest of myself and the Senator from Connecticut [Mr. DODD], relating to the early resolution of troubled financial institutions. The provisions strongly encourage the regulators to make use of the authority that they have to make equity investments in, or take other steps to assist, troubled institutions so that they do not ultimately have to be closed. The provisions set forth general criteria that should be used in examining those transactions that might benefit from such action. I believe this language of encouragement to our regulators is a critical part of a new approach to bank and thrift failures.

I would like to comment on one small aspect relating to these provisions. I think some details regarding the applicability of section 11(c)(12) concerning directors liability when such early resolutions occur is warranted.

Section 11(c)(12) of the Federal Deposit Insurance Act [FDIA], as added by section 133 of this act, protects directors of depository institutions from liability to shareholders and creditors when the directors acquiesce or consent in good faith to the appointment of the FDIC or the RTC as a conservator or receiver or acquiesce to an acquisition or combination under section 38(f)(2)(A)(iii) of the FDIA. Section 38(f)(2)(A)(iii) provides that significantly undercapitalized institutions and undercapitalized institutions that have failed to submit or implement acceptable capital plans may be required to enter into supervisory acquisitions or mergers, if one or more grounds for appointment a conservator or receiver exist.

The institutions subject to sections 11(c)(12) and 38(f)(2)(A)(iii) of the FDIA are substantially similar to those eligible for early assistance under new section 13(c)(8) of the FDIA as added by section 141(e) of the act. As such, the immunity provisions of section 11(c)(12) should apply in such transactions. Indeed, the immunity provisions of section 11(c)(12) should apply to all supervisory mergers and acquisitions that include early assistance and that involve significantly undercapitalized—as well as critically undercapitalized—institutions and undercapitalized institutions that have failed to submit or implement an acceptable capital plan.

The protections afforded under this section should also apply to actions brought by indirect shareholders and creditors, such as shareholders and creditors of a holding company that controls the institution.

The immunity provisions of section 11(c)(12) also effectively protect the directors of a holding company that controls a depository institution where the directors of the institution consent or acquiesce to an action under this section. Of course, this protection would only extend to a holding company's directors with respect to any action required as a result of the consent or acquiescence under this section by the directors of its subsidiary institution. However, to the extent the directors of a holding company take action to implement an action consented or acquiesced to by the institution's directors, the actions of the holding company's directors would be fully consistent with, and in furtherance of, their fiduciary duties.

The act provides that these provisions become effective 1 year after enactment of this conference report. At that time, the provisions would provide the immunity specified in section 11(c)(12) to any actions pending on the effective date if the action was initiated on or after the date of enactment of the conference report.

Again, I am very pleased that the conference report retains the language encouraging the use of early resolution transactions and I hope that the regulators will take every advantage of these provisions to assist, where appropriate, those banks or thrifts that could be aided by equity infusions or other actions to prevent their ultimate failure.●

ANTI-SEMITISM IN UZBEKISTAN AND TADZHIKISTAN

● Mr. D'AMATO. Mr. President, the complete overhaul of the former Soviet Union, while bringing tremendous hope for the future, offers an array of potential problems. Chief amongst these problems is a rise in anti-Semitism. This is an important issue for the Senate to consider. As a result, I feel a report by the New York-based Caucasus Network would offer some insight.

The report follows:

THE REBIRTH OF ISLAM IN UZBEKISTAN AND TADZHIKISTAN: ITS IMPACT ON LOCAL JEWISH COMMUNITIES

(An On-Site Report By the Caucasus Network)

CONCLUSIONS

1. Signs of a vigorous renewal of Moslem culture and religion in Uzbekistan and Tadzhikistan are everywhere. There is increasing pressure on local officials from Islamic political and religious forces to do whatever is necessary to ensure that the republics become independent Islamic nations.

2. For reasons based in both Moslem theology and the historic relations between Moslems and Jews, the growing power of Islam is a terrifying threat to Jews in Central Asia. Jewish leaders have been ordered to support local political movements backed by the Islamic religious establishment. An alarming number of Jews have been attacked under circumstances related to anti-Semitism.

3. The general feeling, even in Uzbekistan, is that Tadzhiks are more of a threat to the Jews than are Uzbeks. However, it also is true that the Jews in the outlying towns of both republics are the most pressured, isolated, and vulnerable. They told terrible stories about actual physical violence against members of their communities and were visibly quite frightened. Some reported having been warned that if they do not convert to Islam, they will be killed.

4. Given what most people regard as the inevitable establishment of independent Moslem nations in Central Asia, ways to protect local Jews and to expedite their emigration must be considered.

REPORT

From October 2nd through October 17th, 1991, Goldie Ellman (a member of the Board of Directors of The Caucasus Network) and I went to Central Asia. We had two objectives. First, we wished to make our own on-site assessment of the growth of Islam and its impact on Jewish communities in the area. Second, we hoped to provide solutions to some of the problems people were having in emigrating to Israel and the United States, thereby hastening and facilitating their exodus from this troubled area.

We went to Tashkent, Bukhara, Samarkand (Uzbekistan) and Dushanbe (Tadzhikistan). We had arranged our schedule prior to our departure and in each city, it essentially was the same.

(a) We were met at each airport by a delegation consisting of from ten to thirty members of the local Jewish community.

(b) We addressed community meetings that were attended by hundreds of people in each city. At each meeting, a presentation on general problems relating to emigration was followed by a long and lively question-and-answer period.

(c) We held conferences attended by the leaders of each Jewish community, at which we discussed anti-Semitism and the impact of the growth of Islam on the Jews in each city. We also trained the leaders in US refugee immigration procedures and we asked questions about the functioning of the local OVIR offices.

(d) We held clinics at which we met with individuals to discuss their emigration problems and personal experiences with anti-Semitism. Both in group seminars and individually, we prepared people for their American embassy interviews and we answered questions relating to the interview packets.

In each city, we literally were mobbed by clamoring crowds of people who were desperate to emigrate (and we have the bruises to prove it). In Samarkand, the crowds were so large that the local militia, replete with floodlights and bullhorns, came to see what was happening. We addressed hundreds of people in groups and met with representatives of some two-hundred-and-fifty families to discuss their individual problems.

This report will discuss what we learned about the growth of Islam and anti-Semitism. It will neither consider procedural emigration problems nor offer suggestions as to how the Jews in Moslem republics might be protected from further anti-Semitic attacks, assisted to emigrate or, if required, rescued and evacuated to other areas. Nor will it weigh the impact of the growth of Islamic power in Central Asia on events in the Middle East or the fact that much of the Soviet nuclear arsenal is in the Central Asian republic of Kazakhstan, possibly vulnerable to take-over by Moslem forces. These crucial questions, constantly on our minds, must be considered in other forums.

TASHKENT

Islam Reborn: Of the cities we visited, Tashkent is the most European in ambience. Even so, there was substantial evidence of renewed pride in local culture. For example, the facade of the Hotel Uzbekistan sported an enormous painting of the Uzbek poet Alisher Navoi, whose anniversary was being celebrated. There were signs in Arabic script, which the vast majority of the Uzbeks cannot read because its use was banned after the revolution (in part to discourage people from reading the Koran and to divorce them from their own cultural heritage).

Because Tashkent is modern in flavor, it is not surprising that we saw fewer people there wearing traditional Moslem dress than in the other three cities. However, people told us that there recently had been an announcement that President Karimov "had ordered 400,000 pieces of Moslem clothing for Uzbeks." This was said to be part of this commitment "to further Islamic culture in Uzbekistan." We were unable to determine exactly what was meant by "Moslem clothing" in this context.

In other cities, we saw women wearing skirts over pants in bright prints and silky materials, but this was just as likely to be traditional Uzbek clothing as Moslem. We also saw men wearing baggy trousers. [It is said that Mohammed will be re-born of a man, which is why many men throughout the Moslem world wear pants with long crotches in order to "catch the baby."]

On one occasion, we saw two Uzbek men dressed entirely in white and wearing turbans and sandals. They were accompanied by a woman in a head-to-toe black veil. These men were wearing the required garb of pilgrims going to Mecca and, with the aid of a man who spoke some Uzbek, we were able to confirm that the three were on their way to Saudi Arabia.

An Independent Uzbek Nation: Many people told us about meeting of Imams of the Kokand directorate, which recently had taken place in Andizhan. At this meeting, the Imams had threatened to over-throw Karimov. In order to remain in power, Karimov was said to have been forced to swear on the Koran that Uzbekistan would become an independent Moslem nation and that he would do everything he could to ensure the resurgence of Islam. When asked, everyone confirmed that the oath Karimov been forced to take was that Uzbekistan would become an independent nation, not merely an independent republic.

One man in Dushanbe said the Imams had pressured Karimov to take this oath on the Koran, but that he had declined to do so. Everyone else said he had taken the oath. We were unable to get any newspaper articles about the meeting in Andizhan, which had taken place prior to our journey. While it is important to verify whether Karimov actually took this oath, it also is fascinating that, with the exception of the one man in Dushanbe, the universal perception among Jews living in Uzbekistan and Tadzhikistan is that he did. We repeatedly were told of this event in every city we visited.

All of the people to whom we spoke agreed that it was only a matter of time before Uzbekistan and Tadzhikistan became wholly independent Moslem nations. The only question still at issue is whether they will become democratic countries like Turkey or fundamentalist Moslem dictatorships like Iran. While they feared much more the latter possibility, no one was comfortable with the idea of living in a Moslem nation. Several people mentioned the "hostage communities" of Jews in Syria, Iran, or Iraq, as though they understood that these might mirror their own futures.

Faced with what they regarded as the likelihood that they might find themselves denizens of a Moslem nation, most of the Jews whom we met wanted to emigrate as quickly as possible. Most of those not actively preparing to leave had no first-degree relatives in America, had been precluded from emigrating to the United States under the procedures effective in October, 1989, and did not want to go to Israel. It was clear that many among them would emigrate if they could come to America.

In assessing this information, it should be remembered that the people whom we met had been "self-selected," because they knew we had come to Central Asia to discuss emigration problems. Even so, those who were refusing to emigrate, either because they perceived no danger or because they declined to go to Israel, appeared blind to events around them.

While in Central Asia, I was reminded of the day in 1965 when my parents had begged me to return home from Athens because they had heard reports of "violent political demonstrations in Constitution Square." I had looked from my hotel window down upon Constitution Square and had told my parents that I didn't see anyone demonstrating. Similarly, it occurred to us that some Jews in Central Asia are too close to what is happening there to appreciate that they are in jeopardy.

Anti-Semitic Violence: There are at least fifty thousand Jews in Tashkent, but all agree that the actual number may be far higher. The majority of Tashkent's Jews are Ashkenazim (of European origin, Russian-speaking) whose families emigrated to the area within the last fifty years. The majority of Jews in the other cities are Bukharans (of Persian origin; home tongue, Judeo-Tadzhik), descendants of Jews who have lived in Central Asia for generations.

Although CN has records of numerous incidents of anti-Semitic violence in Tashkent, the total is relatively small considering the size of the city's Jewish population. People said that in the past there had been little trouble between Uzbeks and Jews and that it had only been in recent years that tension between them and physical violence motivated by anti-Semitism had increased. This development appeared to astonish local Jews and was a source of dismay to them. Some took pains to tell us that the Tadzhiks, whom they characterized as "bad" and "mean," were much worse than the Uzbeks.

We did receive new reports of attacks upon Jews in Tashkent that obviously had been motivated by anti-Semitism. Typical was one that took place in December, 1989, during which members of a Jewish family had been brutalized in their own home by Uzbeks. The husband was beaten with a rifle butt and the attackers tried to rape the wife. Both were tied up and blankets were put over their heads. The husband suffered a fractured nose, concussion, dislocated shoulder, and cracked rib. He lost several teeth and was severely beaten about the face and body. To cover the scars on his face, he now wears a beard.

The Uzbek attackers said that their Jewish victims should "be silent, because we were not in Israel but Uzbekistan;" that "we will kill you all." It is known that this Jewish family was attacked because their neighbors were aware that they "had plans to emigrate from the U.S.S.R." Both at the trial and subsequently, the perpetrators, their friends and relatives harassed the Jewish family, said that they were sorry that they hadn't killed them, and demanded that they emigrate from Uzbekistan. The family has continued to receive threats to this day.

The trial and investigation took place in 1990 and there are indications that they were not conducted impartially because the accused were Uzbeks and the victims were Jewish. Important evidence (the original forensic report) "disappeared," as a result of which the nature of the victims' injuries were claimed to be far less serious than they actually were. Despite eyewitness identifications, two of the criminals were found to be innocent. Serious charges were dropped and shorter sentences were given. Although the

three (of the original five) attackers convicted received three-year sentences, less than a year later they were freed and they have continued to torment their victims.

We saw how the attack upon this family frightened other Jews in Tashkent when we were leaving the home of people who knew the family. Our hosts were so terrified by this anti-Semitic violence that we were asked not to speak English in the hallway. The wife said that her neighbors knew that she was Jewish and that Jews could emigrate, but they "don't know we are planning to emigrate and we don't want to be attacked like [name deleted.]"

BUKHARA

Signs of the Moslem Revival: At six o'clock every morning, the amplified voice of a muezzin atop a minaret called to prayer the sleeping residents of a city still blanketed in darkness. Two years ago, this would not have been possible in Bukhara. Now people are streaming into the mosques being built throughout the city. A madrasa [Islamic college] has opened and is being attended by some 400 students. Signs written in Arabic script are everywhere. Job applications must be filled out in Uzbek. University lectures and announcements must be made in Uzbek. Countless people who do not speak Uzbek are being fired from their jobs. This is an effective form of economic discrimination against Jews and other non-Uzbek speakers, which is becoming increasingly common and about which we heard in every city.

After the revolution, the city's beautiful Moslem buildings were allowed to decay. Now, the order of the day is that Moslem heritage must be preserved. All of the old mosques and historic monuments are being restored. A new medical school named after the great Moslem scholar Avicenna has opened and his portrait adorns its facade. None of this would have been possible before.

Two or three years ago, even in the old part of Bukhara, most women of local nationality wore European clothing. Today, large numbers are wearing traditional costumes. It is to be expected that the older generation would wear such clothing. What is surprising is the number of young women, among them teenagers, who have adopted the traditional garb.

Prior to the August coup, Bukhara's residents could choose among six television stations: two from Moscow, two from Tashkent, and one each from Tadzhikistan and Turkmenistan. Now they get only three stations: one from Moscow and two from Tashkent. All of the programming on the Tashkent stations is in Uzbek, which means that Bukhara's Russian-speaking population can listen only to the one broadcast from Moscow. This was done by order of President Karimov, who said that the republic needed "Uzbek history, Uzbek language, and Uzbek culture." According to one disgruntled Bukharan Jew, Karimov also said that anyone who did not want to speak Uzbek should leave the republic.

The Jewish Community: Of the 200,000 people in Bukhara, 30% are Tadhik, 40% are Uzbek, and the rest are a mixture of nationalities, including Russian, Armenian, Tatar, and Jewish. At one time, there were about 12,000 Jews in Bukhara, some 4,000 of whom have emigrated. Several times we were told, "This used to be a Jewish street, but Tadhiks live here now"; or "This was a Jewish quarter. Now it is Uzbek."

A respectable number among Bukhara's 8,000 Jews have no current intention of emigrating. Is Bukhara's Jewish community safe? Although there have been many incidents of anti-Semitic violence, apparently some think that the answer is yes. One reason we heard often as to why Jews and Moslems get along in Bukhara is that there is food available. In other cities, the possibility of winter famines led to voiced fears among Jews that they would be blamed and that there might be pogroms.

Obviously, the people who want to emigrate do not agree that Bukhara is a safe place for Jews to live. They no longer can abide the repeated incidents of anti-Semitic violence. In Bukhara, people have been attacked on the way to and from synagogue and told, "The time will come when we will spit your blood out" and "We know that you are Jews. Get out of the Soviet Union!" Guests attending a Jewish wedding have had rocks thrown at them with notes attaching saying, "Death to the Jewish people." Dead cats have been thrown into Jewish apartments with notes saying, "The same thing will happen to you!" Jewish children have been beaten at school. Jewish women have been assaulted and told, "Zhid-Jew, go to Israel. This is not your republic." Jews have been attacked by Moslems who say that if they don't emigrate, their homes will be set afire.

One prominent member of the community said that the Uzbeks in Tashkent, Fergana, and Andizhan were "bad men," but insisted that the Uzbeks in Bukhara were different. Yet even though the city is quiet now, he and his family are emigrating because they are sure that "there will be trouble in five or ten years."

How Bukhara is Different: Why do some of Bukhara's Jews feel less threatened by the resurgence of Islam? A visit to the city provides a possible answer. The entire time that we were in Bukhara, we had the feeling that we were in the Middle East. It was not simply the signs with their Arabic lettering, the traditional costumes, the dead dogs and cats lying unattended in the street, the exotic flavor of the city. Rather, it was the behavior of the Jews of Bukhara that made us think that we no longer were in the Soviet Union.

Bukhara's Jews are isolated from the other major population centers in Uzbekistan. They are by far the most traditional and devotedly Jewish among the communities we visited. It is quite usual to find three generations living the same house, and for some twenty or thirty people to be sharing the cooking facilities in the courtyard and the one, sometimes primitive, bathroom. In their homes we found kosher food, Jewish ceremonial objects, Hebrew writing on the walls, people who ritually washed their hands and made a blessing before they ate their bread.

We noticed that many of the people spoke in soft voices and that some lowered their eyes when addressing each other. Whereas we had been mobbed in other cities, in Bukhara even large crowds of people parted quietly and respectfully to let us both walk into the synagogue. Bukhara's Jews were extremely polite. Their silence when we addressed the community was profound.

We considered whether their underplayed ways might not have been developed over generations, part of an instinctive community reaction to living amidst a Moslem majority. An example: We are in the car with a Jewish man whom we know to be of strong character. We are driving through the winding streets of the old city where the roads are wide enough for only one car to pass at a time. We turn into a narrow street and have driven about one-quarter of the way down it when another car turns into our street, coming from the opposite direction. Although we are much further into the street than the second car, our driver puts his car into reverse and backs out the way he came.

"Is there a protocol about who backs up?" I asked him.

"Uzbek," is his laconic response.

In his mind, the reasoning is obvious. The driver of the other car is Uzbek, so the Jew gives way. This was why when we were in Bukhara, we repeatedly were reminded of Yemen. The Jews of Yemen were not allowed to look Moslems in the face when talking to them. [Bukhara's Jews speak softly and sometimes with downcast eyes.] In Yemen, Jews had to step off the sidewalk into the street if a Moslem approached in the opposite direction. [Uzbeks have the unwritten right of way in Bukhara.] To call it subservience is an insult to the Jews of Bukhara. Instead, view it as a centuries-old communal response to generations of life as a detested (or at best tolerated) minority among hostile Moslems.

In his book The Jews of Islam, the respected scholar Bernard Lewis recounts occasions upon which Moslems attacked the non-believers living among them and notes that "the commonest reason by far for such outbreaks in premodern times was that the [non-believers] were not keeping their place, that they were acting arrogantly, that they were getting above themselves." This is a lesson that Bukhara's Jews appear to have learned from history.

They have developed a modus-vivendi with their Moslem neighbors that has served them in the past and, some of them apparently hope, will protect them in the perhaps precarious future. We pray that they are right. If they are wrong, then we must be prepared to rescue them as quickly as is possible.

SAMARKAND

The Jewish Community: Samarkand, a city of some five to six-hundred thousand people, owes its Moslem flavor in no small part to the architecture of the Registan, the tomb of Tamurlaine's dynasty, and other such glorious monuments. At one time, there were about fifteen thousand Jews in Samarkand. Near to half of the Jewish population already has emigrated. Of the eight to nine thousand Jews still in the city, most wish to emigrate. Unfortunately, no matter how dangerous they think their future in Smarkand may be, many refuse to consider going to Israel. They have been influenced unduly by several families that emigrated to Israel, only to return to Samarkand to live and to spread tales of their disillusionment with conditions in the Jewish homeland.

[The issue of the returning families have been raised in the context of a request that we give them financial aid. When we noted that some people are discontent no matter where they live; the people who had broached the subject of these families nodded knowingly, indicating that this might well be the case with these several families. Nevertheless, the negative impact upon aliyah of such reverse emigration must be addressed.]

People again recounted television reports that President Karimov had been forced to swear "to do all he can to make Uzbekistan a Moslem state." No one doubted that it would happen eventually and most believed it would happen soon. One woman succinctly stated the general consensus when she said: "The only question discussed on the streets here is whether the republic will go the way of Iran or Turkey. It is impossible to guess the outcome, but neither way will be good for the Jews."

Anti-Semitism: As in each of the cities we visited, we heard about newly-built mosques and growing attendance at prayer services. Again, Jews were being fired from their jobs because they did not speak Uzbek and "there is no opportunity for non-Uzbek-speaking adults to learn the language." Local schools no longer accept Jewish students "because they say that we are going to emigrate. This is a new problem for us." We also received documentation of more incidents of anti-Semitic violence in Samarkand and we learned that five of the city's Jews had been wounded fatally during anti-Semitic attacks in as many years.

"When Jews are murdered, the militia does nothing," one man said bitterly. "Even Jewish lawyers are afraid to investigate these cases."

In Samarkand was most vividly expressed another recurrent problem facing Central Asia's Jews: their growing inability to get health care. The majority of Jewish doctors have emigrated and physicians of local nationality often refuse to treat Jews or will do so only if they are paid extortionate fees ranging in the thousands of rubles.

We met the wife of a young Jew hospitalized with a fatal disease. Rather than treating him, the Uzbek staff physicians have been subjecting him to a litany of anti-Semitic slurs. Were it not for medication that his family purchases on the black market, he might already be dead. This young man and others like him are being murdered on a daily basis because they are Jewish.

What the Jewish Cemetery Revealed: On the morning that we left Samarkand, we accepted the invitation of community leaders to visit the Jewish cemetery. We went first to Ifraim's grave, his mother marching stalwartly ahead of us. He had been murdered by Uzbeks six years ago, but she still howls forlornly behind his stone. Perhaps she remembers that a witness had heard him crying "Momma" while he was tied up like an animal and stowed in the trunk of his killers' car, or that his murderers had burned his body and danced around the fire singing, "We killed a Jew!"

We paid our respects to Ifraim's memory, comforted by the knowledge that his wife and child were safe in Israel and that we were helping the rest of his family to emigrate. I didn't have anything with me from Israel, so I gave Ifraim's mother a penny to place in the ground near his grave, a little part of America so that he too might be free.

Then we were taken on a tour of Samarkand's Jewish cemetery. Bukharan Jews put portraits of the deceased on the stones erected to memorialize them. We saw faces too young to be buried and, as we passed them, we were told:

"He was murdered during his service in the Russian army."

"This is David's brother. He was sitting in front of his house when they came up to him, called him a zhid [kike], then stabbed him to death."

"This boy died because they don't like Jews in the army."

"This is the Jewish artist we told you about, who was killed by anti-Semites. His wife and children want to emigrate, but they were too frightened to come to see you."

"These boys were killed by anti-Semites in the army. So was he. And this one too."

"This is the son of the old man you didn't have time to see yesterday. He also was murdered by anti-Semites."

Goldie murmured the rhetorical question that was passing through both of our minds, "Didn't anyone in this cemetery die a natural death?"

Our hosts had been quietly insistent that we visit their city's Jewish cemetery and now we knew why. Nothing attested more eloquently to the pervasiveness of anti-Semitism than the faces of the young victims staring at us from their gravestones, reminding us that they had been murdered only because they were Jewish, daring us to forget them.

Upon reaching the six-foot tall fence that separated the Jewish cemetery from the adjacent Moslem cemetery, I muttered, "It isn't high enough."

When he heard the translation of my remark, the activist walking next to me laughed, then hugged me. He knew that I understood at last what it is like to be Jewish in Central Asia.

DUSHANBE

A History of Violence: Dushanbe's reputation had preceded it. During and since the February, 1990 demonstrations by local Moslems, Jews had been the particular targets for violent attacks motivated by anti-Semitism. CN's files contained more documented cases of anti-Semitic violence from Dushanbe than from any other city in the Caucasus or Central Asia.

Countless Jews in Dushanbe had been the victims of physical attacks by Moslems who demanded that they leave Tadzhikistan. Typical epithets included: "Go to Israel; you damned Jewish dog." "Get out or we'll burn down your house and kill your entire family." "Jews go back to Israel!" "We'll clean all Jews out of the city." "Sooner or later we will kill all Jews."

Jewish stores were burned and looted. Jews were forced out of business or were required to pay extortionate sums to Tadzhiks in order to remain open. "Evrei von" [Jews get out] was scrawled on the outer walls of Jewish homes.

Islam Militant: "There is no future for Jews here," a Jewish leader told us in Dushanbe. After seeing the physical evidence of the re-birth of Islam and hearing testimony of its impact on the Jewish community, we could not but agree.

The spiritual and temporal power of Islam in Dushanbe is growing rapidly. Mosques abound, the muezzin's call to prayer is answered by spiralling thousands. Men press their heads against the ground in the city's central square and pray during political demonstrations. Young women wear traditional clothing formerly seen only on their elders.

While some may applaud this growth of religious sensitivity in a previously atheistic republic, most would agree that this should not occur at the expense of other religions and their adherents. Unfortunately, that is what is happening in Dushanbe. A minor but practical example is that all of the few building materials to be found in the city are being funneled to the construction of a madrasa, with the result that construction of the community's new Jewish school is at a halt.

We were taken to Dushanbe's madrasa ("It is larger than Samarkand's Registan") because there were things there that the Jewish leaders wanted us to see. They pointed to the cupola atop the main building in the complex. Had tradition been followed, it would have been painted blue. But this cupola deliberately had been painted in the brilliant green hue of militant Islam. Its purpose, Jewish leaders said, "is to signify followers of the green banner of Islam; that is, to affirm Islam's might and irrepressible offensive."

The role of the Islamic clergy during the recent political unrest was recognized throughout Dushanbe. Large numbers of the men who had been encamped in the main square were believers from the countryside who had been offered by their mullahs to come to Dushanbe in order to participate in the demonstrations.

The urban Moslem religious leaders also had played their part. While at the madrasa, we were shown the hundreds of tents in the courtyard of the main building of the complex. These were the very tents that had been used by the demonstrators who had lived in the town square weeks before, proof that whatever their public political leadership, the real force behind the city-wide demonstrations had been the Islamic religious establishment.

Coercion on the Jewish Community: As Islam's power increases, the situation of the Jewish community is becoming progresssively more precarious. During the recent demonstrations, Moslem leaders called the president of the Jewish congregation to demand that the Jews come to the town square to participate in the demonstrations and publicly to pronounce their support of the Moslem cause. This they declined to do, preferring instead to walk a dangerous path of neutrality which, ultimately, is a no-win situation for them.

Before we left Dushanbe, two community leaders gave us an unsigned letter written on behalf of the city's Jews. Moments before we boarded the plane to Moscow, one turned to the other and asked, "What more have we got to lose?" With a combination of defiance and resignation, both men signed the letter.

In their appeal, these Jewish leaders discussed the impact of the rebirth of Islam on their community: "Amidst the background of Islam, anti-Semitism has quickly and easily gained force. One need only explain the overt threat and coercion on the part of the clergy toward the Rabbi, demanding active participation on the part of the Jews in a meeting in Dushanbe in October, 1991, which was convened by the Islamic clergy in support of the democrats in the coup. One of the meeting's participants, a represenative of the clergy, even openly announced a struggle with the Communists and the Jews, having been convinced that Communism is a Jewish doctrine and that all Jews are as guilty as the Communists."

"There is no active defense against the offensive of the Islamic fundamentalists, who are active opponents of the Jewish religion," the two leaders wrote. This, and their subsequent characterization of Islam as "hostile to Judaism," is accurate. According to the Koran, Jews have been "consigned to humiliation and wretchedness; they brought the wrath of God upon themselves, and this because they used to deny God's signs and kill His prophets unjustly and because they disobeyed and were transgressors." [Sura II, verse 61] Indeed, the Moslem scholar al-Jahiz has noted that although Christianity, with its Trinity, was theologically more offensive to Moslems than Judaism, Moslems still despised Jews far more than they did Christians. [see S. D. Gotein, Jews and Arabs]

To Dushanbe's Jewish leaders, "all the indicated arguments of the hostility on the part of Islam and its representatives toward Jews have convinced [us] of the danger to peaceful coexistence with Jews under an Islamic regime." For these reasons, their greatest fear is the very real possibility of "the creation of an Islamic republic with threatening consequences in general and particularly for Jews."

The leaders of this bealeaguered Jewish community described themselves and their

people as "anxious Jews emerging from the circumstances motivated by fear of the fate of the establishment of Islam in Tadzhikistan that lies before us" and begged for help in emigrating as quickly as possible.

JEWISH LIFE IN OUTLYING TOWNS

The special danger posed to Jews who live outside of Central Asia's major cities is based upon several factors. The Islamic clergy has a strong hold upon Moslems in the countryside. This, plus inherent rural fundamentalism, exacerbates the traditional Moslem theologic and historic hostility to Jews. Additionally, Jews who live in outlying towns, especially those in which most members of the community already have emigrated, are far more vulnerable to anti-Semitic attacks because they are so isolated.

People from outlying towns had been notified that we would be in Central Asia and came to see us in the cities that we visited. Living in remote areas, among some of Central Asia's most vicious anti-Semites, these Jews did not have the luxury of worrying about the possibility of future anti-Semitic violence in their towns. Too many already had experienced it first-hand. Andizhan's Jews, for example, needed only to remember the events of May, 1990, during which dozens of Jewish homes had been set afire and numerous people had been injured by rioting Uzbeks. Their night of horror had been publicized in the West. What was happening to Jews in other outlying towns was less well-known.

Jews from these towns said that they were afraid to attend synagogue because so many congregants had been attacked on their way to or from services. Some reported that Moslems already were demanding that they "either convert to Islam or get out of our land." Others said that Jewish women had been told that unless they wore Moslem clothing and veils, they would be disfigured.

"I am very afraid of the increasing power of the Moslem fundamentalists in our area," said one small-town Jew. "If they come to power, not one Jew will remain alive here."

A delegation from one outlying town recounted the details of four recent murders of Jews, all under circumstances that clearly were anti-Semitic. A young man who had been threatened and insulted many times because he was Jewish was stabbed to death by local nationals, who threw his body near his home. A Jewish boy died from injuries inflicted by Moslems who purposely ran him down with their car. Two elderly Jewish sisters were tortured and murdered in their home by Moslems who have continued to threaten the Jewish community. "We will kill all Jews," they are saying. "If you want to live, you should leave, the sooner the better. If you don't, we will set fire to your houses." They have followed through on these threats by throwing Molotov cocktails through the windows of Jewish homes.

Only three months before, a member of this community had taken his life because he no longer could bear being persecuted because he was Jewish. A relative told us that he had left a note in which he had written, "I am committing suicide because I cannot stand living among people who will not let me live." Was he not yet another victim?

Many Jews who lived outside of the major cities already have fled to Israel. We were told of others who wanted to emigrate, but were too terrified even to come to see us. In some towns, only a few Jews remained. Shakhrisabz (Uzbekistan), for example, reportedly has twelve Jewish families.

Among those who were left behind in outlying towns were many who have relatives in the United States and who are waiting to be invited for interviews at the US embassy. We begged those whom we met to give us something in writing describing what their lives were like, hoping we might use their letters to convince American officials to expedite their emigration. The people from one outlying town categorically refused.

"They would kill us if they found out," a man said.

I pressed the members of this delegation to write a letter, but they were too afraid. I promised not to publish it, but only to show it to American officials. I said that they did not have to sign their names, but still they declined to write anything. When I repeated that they did not have to sign their names, then swore on the Torah that I never would reveal to anyone who they were, they finally agreed to give me a letter.

Their letter related a piteous tale of "a carefully hidden oppression of Jews, both morally and physically." They write of a demonstration that had taken place on September 27th, at which some 20,000 Moslems heard their religious leaders call for "Uzbekistan for Uzbeks * * * Jews to Jerusalem." They told of Jewish lives filled with demands from increasingly fundamentalist Moslem neighbors that they "vacate Uzbek territory" or face "pogroms and physical destruction."

In their world, Jewish businessmen are at the mercy of Uzbeks, backed by hooligans, thugs, and blackmailers who make exorbitant demands and who "threatened and even physically pressured (there were beatings and exterminations of a few people, six boot shops were burned and two watch shops were robbed) and forced all the Jewish artisans to leave their work." High level Jewish administrators have been pushed by "physical and moral pressure" out of their jobs, "so that those places may be occupied by Uzbek nationalists and Islamic believers." Prayer services are conducted in a private home because Uzbek officials will not return the synagogue (now used as a radio station) to the Jewish community, though four mosques have been returned to Moslems and many new ones are being built.

"In recent times," they wrote, "daily occurrences of insults and humiliation of Jews by Uzbek nationalists have become more common. In the streets of the town, on public transport, in the stores, markets, and so forth, as a result of all this, Jews live in fear and are forced more and more often to stay at home. Therefore, they are afraid for their lives and the lives of their friends, relatives, and children."

Theirs were the faces of men who dwelt among people who hate them. Never before had we seen grown men so frightened.

The secular leaders in Uzbekistan and Tadzhikistan, be they nominally Communist or not, are engaged in a battle for supremacy with the Islamic political/religious establishment. Everyone agrees that eventually, these republics will become independent Moslem nations. Whether they will be moderate or fundamentalist matters little to the indigenous Jewish population. An Islamic victory means almost certain disaster for the Jews.

In each city we visited, the leaders and teachers of the Jewish communities were preparing to emigrate and were urging their constituents to do the same. People repeatedly said to us, "With God's help and yours, we will get out of here." In no more poignant way could they have expressed their bleak assessment of the future of Jews in the Central Asian republics.●

APPOINTMENT OF SPECIAL COUNSEL BY THE PRESIDENT PRO TEMPORE

● Mr. BYRD. Mr. President, pursuant to the authority granted to me by Senate Resolution 202, agreed to on October 24, 1991, upon the joint recommendation of the majority and minority leaders, I appoint, effective January 2, 1992, Mr. Peter E. Fleming, Jr., a partner in the law firm of Curtis, Mallet-Prevost, Colt & Mosle with offices in New York and Washington, DC, as the Special Independent Counsel.

Mr. Fleming will conduct an investigation of any unauthorized disclosures of nonpublic confidential information from Senate documents in connection with the consideration by the Committee on the Judiciary of the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court, and by the Select Committee on Ethics of matters related to Charles Keating.●

OUTSTANDING EDUCATOR

● Mr. D'AMATO. Mr. President, I pay tribute to Harriet Zimmerman who has made outstanding contributions to the lives of the Elmont Public School System in Elmont, NY.

Ms. Harriet Zimmerman has been a handicapped teacher for 23 years. She is a role model for handicapped children and a leader whose guidance has played a significant role in the enlightenment of her students.

She has devoted her life to cultivating the creativity and curiosity of children, and has held firmly to her conviction that school and world events are, of necessity, intertwined. In this regard, Ms. Zimmerman was instrumental in the exchange of massive amounts of correspondence between her third graders and American servicemen in the Persian Gulf during Operation Desert Storm. They wrote to the sailors of the U.S.S. *Midway*, the only carrier not to lose a single man or plane.

Ms. Zimmerman has received a citation from the town of Hempstead and has been on the television program "Good Morning America." It is time for us to pay tribute to a woman whose contributions and selfless giving have made a difference to her community and her country. Ms. Zimmerman, I salute you.●

RULES OF PROCEDURE FOR OFFICE OF TEMPORARY SPECIAL INDEPENDENT COUNSEL

● Mr. FORD. Mr. President, pursuant to section 6(c) of Senate Resolution 202, 102d Congress I submit for the RECORD the rules of procedure for the Office of Temporary Special Independent Counsel, which have been adopted, in accordance with the resolution, by me and by the Senator from Alaska [Mr.

STEVENS], acting jointly, in our capacities as chairman and ranking minority member of the Committee on Rules and Administration.

The rules follow:

RULES OF PROCEDURE OF THE U.S. SENATE OFFICE OF TEMPORARY SPECIAL INDEPENDENT COUNSEL (ESTABLISHED PURSUANT TO SENATE RESOLUTION 202, 102D CONGRESS)

RULE 1. SUBPOENAS

1.1 Request. The special independent counsel shall submit to the President pro tempore written requests for the authorization of subpoenas for the attendance at deposition of any witness, or for the production of any correspondence, books, papers, documents, or other records, that may be relevant to the investigation authorized by Senate Resolution 202, 102d Congress.

1.2 Authorization. The President pro tempore shall have the power to authorize, in writing or by telephone, the issuance of subpoenas upon the written request of the special independent counsel. Whenever the President pro tempore exercises the power to authorize subpoenas by telephone, the authorization shall be contemporaneously memorialized in writing.

1.3 Issuance. Upon receipt of the written authorization, or written memorialization of the telephone authorization, for the issuance of a subpoena by the President pro tempore, the Secretary of the Senate shall issue the subpoena that is the subject of the authorization. The Secretary shall keep a log, and a file, of all subpoenas that have been issued.

1.4 Service. Subpoenas may be served by any person designated by the Secretary of the Senate. All subpoenas shall be accompanied by a copy of Senate Resolution 202, 102d Congress, and these rules. Criminal or civil enforcement proceedings for a witness's failure to appear at a deposition, to testify, or to produce records shall not be initiated unless a duly authorized subpoena was served upon the witness.

RULE 2. DEPOSITIONS

2.1 Designation. The special independent counsel shall designate in writing the counsel, whether one or more in number, who will examine witnesses at each deposition. For purposes of Rule 2.3, the term "special independent counsel" includes the special independent counsel and any counsel designated by the special independent counsel to examine witnesses pursuant to this rule.

2.2 Attendance.

(a) General Rule. Unless otherwise specified, the deposition shall be in private.

(b) Counsel.

(1) Presence. Subject to the provisions of Rule 2.2(b)(2)–(4), a witness's counsel shall be permitted to be present during the witness's testimony at any deposition to advise the witness of his or her rights.

(2) Conflicts. The chairman and ranking minority member of the Committee on Rules and Administration, acting jointly, or the full Committee if the chairman and ranking minority member refer the matter to it, may rule that representation of a witness who is an officer or employee of the government by counsel from the government, or of a witness who is an officer or employee of a corporation or association by counsel from the corporation or association, or of a witness by counsel representing other witnesses, creates a conflict of interest, and that the witness shall be represented by counsel not from the government, corporation, or association or not representing other witnesses.

(3) Inability to Obtain Counsel. A witness who is unable for indigence or other reason to obtain counsel may inform the Committee on Rules and Administration at least 48 hours prior to the scheduled return on the subpoena, and the Committee will endeavor to obtain volunteer counsel for the witness. Failure to obtain counsel will not excuse the witness from complying with the subpoena.

(4) Conduct. Counsel shall behave in an ethical and professional manner. Failure to do so shall, upon a finding to that effect by the chairman and ranking minority member of the Committee on Rules and Administration, acting jointly, or the full Committee if the chairman and ranking minority member refer the matter to it, subject counsel to disciplinary action, which may include warning, censure, or removal.

2.3 Procedures.

(a) Examination. Witnesses at depositions shall be examined upon oath administered by an individual authorized by federal or local law to administer oaths. Questions shall be propounded orally by special independent counsel.

(b) Objections. Objections by a witness as to the form of questions shall be noted for the record. If a witness objects to a question and refuses to testify, or objects to the production of records, on the basis of privilege or other ground, special independent counsel may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection. The ruling may be sought from the chairman and ranking minority member of the Committee on Rules and Administration. The chairman and ranking minority member, acting jointly, may rule on the objection, and order the witness to answer the question, or to produce the records, if the objection is overruled, or may refer the matter to the full Committee for a ruling. Procedures leading to civil or criminal enforcement shall not be initiated unless the witness has refused to testify, or to produce records, after having been ordered to comply.

2.4 Transcripts.

An accurate electronic or stenographic record shall be kept of all testimony at depositions. If a transcript is prepared, the witness shall be furnished with a copy, or access to a copy, of the transcript for review. Upon inspecting the transcript, a witness may submit, in writing within five days, corrections to the transcript, with a statement of the reasons for the corrections, to correct errors of transcription, grammatical errors, or errors of fact. Within the same time limit, the witness shall, if a copy was provided, return the transcript, and the witness shall sign the transcript, including any changes submitted. Any corrections submitted by the witness shall be appended to the transcript. If the witness fails to sign a transcript, or to return a signed copy, the date that access to a copy, or a copy, was provided, and the failure to sign or to return it, shall be noted on the transcript. The individual who made the electronic or stenographic record shall certify on the transcript that the witness was duly sworn in his or her presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the office of special independent counsel. The special independent counsel may stipulate with the witness to changes in this procedure. Objections to errors in this procedure that might be cured if promptly presented are waived unless timely objection is made.

RULE 3. RETURN OF DOCUMENTARY SUBPOENAS

Return on subpoenas for the production of correspondence, books, papers, documents, or other records, without testimony, may be required, at other than a deposition, at the special independent counsel's offices or other place specified in the subpoena. Rulings on objections to the production of records shall be obtained in accordance with Rule 2.3(b).

RULE 4. CONFIDENTIALITY

4.1 Security. The office of special independent counsel shall operate under strict security precautions in order to maintain the secrecy of all office records.

4.2 Nondisclosure. Except as necessary for the performance of his or her duties in connection withthe investigation authorized by Senate Resolution 202, 102d Congress, and as authorized by that resolution and these rules, no personnel of the office of special independent counsel, as defined in Rule 4.5, shall disclose, in whole or in part or by way of summary, to any person, for any purpose or, unless authorized by the Senate, in connection with any proceeding, judicial or otherwise, any records or other confidential information of the office. As used in this rule, the term "records or other confidential information of the office" includes, but is not limited to, all testimony taken, including the names of witnesses testifying, and all exhibits or other materials presented or received, in depositions or otherwise, and also includes any proposed or otherwise nonpublic conclusions, views, memoranda, or report of the office of special independent counsel.

4.3 Nondisclosure Agreement. All personnel of the office of special independent counsel, as defined in Rule 4.5, shall agree in writing, as a condition of employment or agreement for the provision of services, to abide by Rule 4.2.

4.4 Violations. Any of the personnel of the office, as defined by Rule 4.5, who fails to conform to the provisions of Rule 4.2 shall be subject to disciplinary sanction, including termination of employment or agreement for the provision of services.

4.5 Definition of Office Personnel. For purposes of Rule 4, the term "personnel of the office of special independent counsel" includes the special independent counsel, any persons engaged to perform, or who perform, services on behalf of the office, the employees of the office, any detailees and consultants to the office, and any employees of the Senate who assist the office or are given access to any records of the office for reasons related to their official duties.

RULE 5. EFFECTIVENESS, PUBLICATION, AND AMENDMENT OF RULES

These rules shall be effective immediately upon adoption and shall be published in the Congressional Record. These rules may be modified, amended, or repealed by the chairman and ranking minority member of the Committee on Rules and Administration, acting jointly. Any changes in these rules shall be effective immediately upon adoption and shall be published in the Congressional Record.●

THE REPORT OF THE SELECT COMMITTEE ON ETHICS ON THE INVESTIGATION OF SENATOR ALAN CRANSTON

● Mr. RUDMAN. Mr. President, on November 20, 1991, the Senate Select Committee on Ethics presented its report on the investigation of Senator ALAN CRANSTON to the Senate. Following the committee's report, Senator CRANSTON responded to the committee's reprimand of his actions and office prac-

tices. The defenses in that response, as well as in the documents he inserted into the CONGRESSIONAL RECORD, are convoluted and misleading.

A basic review of the evidence in the committee's report and hearing record demonstrates that Senator CRANSTON was most deserving of at least a committee reprimand. The resolution adopted by the committee states that Senator CRANSTON's conduct was "improper and repugnant" and cites, as grounds for not recommending a more severe sanction, extenuating circumstances unrelated to the conduct in question.

It should be noted that the committee not only reprimanded Senator CRANSTON for his actions on behalf of Mr. Charles Keating and Lincoln Savings and Loan Association, but also for "office practices [that] further evidenced an impermissible pattern of conduct in which fundraising and official activities were substantially linked." However, I will confine these remarks to the Lincoln matter because Senator CRANSTON's defense on this is especially disturbing. He not only denies much of the conduct for which he was charged, but inaccurately portrays the nature of the charge.

Before reviewing the major defenses raised by Senator CRANSTON, I want to emphasize that the committee took every opportunity to ensure that Senator CRANSTON's due process rights were observed and his arguments given a full hearing during the various stages of the proceedings. Senator CRANSTON had a full opportunity to present his position personally in a deposition prior to the hearings, an appearance before the committee in closed session, an opening statement at the hearing, an affidavit at the close of the hearings, and several prehearing and posthearing written submissions. While he waived his right to appear for questioning at the hearings, he was represented throughout those hearings by counsel who exercised Senator CRANSTON's right to cross-examine and confront witnesses and documentary evidence.

The committee took its duties and obligation seriously and strived mightily to issue a fair decision. Senator CRANSTON's defenses were considered and given appropriate weight. His insinuation before the Senate that public pressure on committee members affected the result is ludicrous.

Turning to Senator CRANSTON's defenses, Senator CRANSTON asserts that the committee's finding of improper conduct was based on nothing more than a finding of proximity in time between legitimate contributions accepted and legitimate action taken. This assertion is a serious, and I believe deliberate, misstatement of the committee's charge and conclusions.

The committee, in its report, found that "Based on the totality of the circumstances, Senator CRANSTON engaged in an impermissible pattern of conduct in which fundraising and official actions were substantially linked." The key concept in this statement is the finding of a pattern of linkage that was in fact more than the simple concidental timing between Senator CRANSTON's actions and the contributions. The nature of these dealings was more disturbing than the timing of the events.

In my floor statement, I outlined the facts of the four major series of events that formed the basis for the committee's finding of improper linkage. I will not repeat the chronology here since they are set forth in great detail in the report, as well as my statement of November 20. I will, however, make some further comments on the committee's evaluation of the four incidents and demonstrate that Senator CRANSTON impermissibly linked contributions and official action.

With respect to each of those four series of events, there is at least one meeting or telephone call with Mr. Keating in which Senator CRANSTON both discussed Lincoln's problems with the Federal Home Loan Bank Board and solicited funds for the voter registration groups. The two separate subjects were discussed at the same time in a meeting between Senator CRANSTON and Mr. Keating on September 24, 1987, in a telephone call on November 6, 1987, and at a dinner on January 8, 1988. They were both discussed in a letter written by Senator CRANSTON to Mr. Keating on October 6, 1987, and linked by inference by Senator CRANSTON at a dinner on December 14, 1988, when the Senator greeted Mr. Keating with the comment, "ah, the mutual aid society."

The evidence also indicates that the two subjects were discussed within the confines of one meeting, or at least within the space of hours or a couple of days, when Senator CRANSTON visited the headquarters of American Continental Corp., Lincoln's parent company, on February 9 and 10, 1988, during the spring of 1989 when the bank board was proceeding to the final resolution of the Lincoln case, and during January or February of 1987 when Lincoln first sought assistance from Senator CRANSTON with respect to its dealings with the bank board. In addition, Senator CRANSTON's chief fundraiser, Ms. Joy Jacobson, linked Lincoln's problems and solicitation in two separate memos to Senator CRANSTON, one written on January 2, 1987, and one on September 6, 1987. Finally, Mr. Grogan, Lincoln's chief lobbyist, linked the subjects around March 1, 1989, when he informed Ms. Jacobson that Mr. Keating was willing to make another donation of $100,000, but could not do so while the sale of Lincoln was pending. Although there is no evidence that Senator CRANSTON was informed of this remark, he was aware that Lincoln had been solicited for an additional contribution at that time.

The Senator from California would have the Senate believe that his official actions and solicitation were only linked in time. As all my colleagues know, if the same two unrelated subjects repeatedly arise every time two individuals interact, somebody is trying to send a message that the two matters are linked. Whether Senator CRANSTON was sending the message himself, however inadvertently, or accepting a message Mr. Keating was sending and then talking official action, the result is improper conduct.

Moreover, in evaluating the totality of circumstances facing the committee, it is worth looking at both the nature of the official actions and the fundraising. First, let us look at what Senator CRANSTON did on behalf of Lincoln. The record shows that, in a span of 2 years and 2 months, Senator CRANSTON personally took action on behalf of Lincoln at least 13 times, not including the April 1987 meetings. On February 16, 1988, he discussed with bank board Chairman Wall the details of a proposed agreement between Lincoln and the agency. In the spring of 1989, he called every bank board member about the proposed sale of Lincoln, some more than once, calling one at his unlisted home number in the evening. He discussed details of the proposed sale, and told at least one bank board member that Lincoln was not being dealt with fairly by the board's Office of Regulatory Affairs. He also spoke with a bank board staff member about the sale and a regulator at another Federal agency. These contacts cannot be fairly characterized as routine status calls.

In early May 1988, in response to a call from Mr. Grogan, Senator CRANSTON's aide, Ms. Carolyn Jordan, told two high-ranking board officials that Senator CRANSTON was concerned about the board's decision to take supervisory approach and may have threatened to hold hearings. Whatever the precise wording of her message, it was sufficiently strong that the bank board officials suggested to her that Senator CRANSTON should wait until after they held discussions with Lincoln before taking any action. Ms. Jordan wrote a detailed memo to Senator CRANSTON on May 6 describing the call. Senator CRANSTON met with Chairman Wall on May 16, at which time he raised the status of the Lincoln matter. On may 20, the bank board entered into an agreement with Lincoln that most people believe favored Lincoln. The message was apparently delivered.

The committee concluded that Senator CRANSTON's contracts with the bank board on behalf of Lincoln were not, in and of themselves, improper. Nonetheless, the degree of intervention was extraordinary and far surpassed what any other Member of Congress did for Lincoln.

Senator CRANSTON states in his defense that there was sufficient basis for an inquiry into the Lincoln matter. The committee concluded that he had a reasonable basis to be concerned about the regulation of Lincoln in April 1987, based on the Atchison letter and Greenspan report. However, Senator CRANSTON had no similar justification for his intervention in 1988 and 1989 and, in fact, had evidence that should have raised doubts about Mr. Keating and Lincoln. He relies only on the outdated 1987 justification and the fact that Lincoln employed a number of Californians.

Finally, let us look at the contributions. As with the intervention on behalf of Lincoln, the committee concluded that the contributions were not, in and of themselves, improper. I will not, today, go into the $49,000 contributed to the Senator's reelection and Presidential campaigns, the $85,000 contributed to the California Democratic Party—all of which was given before 1987—or the $10,000 to Senator CRANSTON'S political action committee. I will focus only on the $100,000 solicited in February 1987 and contributed on March 3, the $250,000 solicited on September 24, 1987 and contributed on November 6, the $500,000 contributed on February 9 or 10, 1988, and the $100,000 offered but never contributed in March 1989.

These contributions were each solicited and contributed at a time when Mr. Keating was seeking assistance from Senator CRANSTON. During the entire 2-year-and-2-month period, Mr. Keating never sought action from Mr. CRANSTON when contributions were not solicited, promised, or contributed. Conversely, contributions were never sought by Senator CRANSTON except at times when Mr. Keating was seeking assistance.

While the issue before the committee was the linkage between contributions and actions, and not the nature of the contributions, the purpose and source of the contribution merit examinaiton. Mr. Keating was a conservative Republican with a history of supporting both conservative and philanthropic causes. The donations in this case did not fit in either of those categories. These contributions were solicited for and made to voter registration groups closely affiliated with Senator CRANSTON. The clearly intended use of these contributions, as well as the $85,000 contributed in 1986 to the California Democratic Party, was to increase the voter turnout among individuals likely to vote for the Democratic candidates. To what did Senator CRANSTON attribute his successful solicitation of these out-of-character donations, especially given that the solicitations were occurring precisely when Mr. Keating was requesting assistance with the Federal Home Loan Bank Board?

When one examines the totality of the circumstances—the repeated instances where contributions and official actions came up in the same conversation, the two times they were linked in memoranda, the nature of the intervention sought and secured, the absence of inquiry into the merits of the intervention, the amount and nature of the contributions, and the fact contributions and actions are always linked in time—the only reasonable conclusion is that there was a pattern of conduct in which contributions and official actions were substantially linked in time and other circumstance.

Senator CRANSTON's characterization of the committee conclusion as just a finding of linkage in time is an effort to create the proverbial strawman, which he then tries to knock down. Unfortunately, he missed the target. His statement before the Senate that there has been "no charge that there was any other connection between the donations and actions" is inaccurate.

The Ethics Committee does not consider it improper to make inquires of agencies on behalf of individuals and to intervene on behalf of individuals when the facts merit it. Nor is the solicitation of contributions wrong under current law and practice. It is when a Senator links official actions with contributions that the committee will find improper conduct.

In this case, the fact that Senator CRANSTON's actions were often close in proximal time to the request for or receipt of large contributions was disturbing, not solely controlling. The larger, more encompassing concern was that Senator CRANSTON, time and again, often in the same meeting, intermingled constituent matters and fundraising issues in his dealings with a constituent, and that this pattern of activity continued for a significant period of time.

Senator CRANSTON, in arguing that he was only guilty of the appearance of improper conduct and not any actual improper conduct, points to the committee's conclusion that he did not violate any law and that there was no quid pro quo; that he did not act in exchange for contributions.

Senator CRANSTON further defended himself by claiming that the committee created a new principle of improper conduct based on linkage of action and contribution, and then applied this principle ex post facto to his case. I totally reject this defense.

The committee's finding that Senator CRANSTON violated no law does not equate to a finding that he was not motivated by or did not link contributions, nor does it preclude the possibility of improper conduct. Illegality is not the same as impropriety.

There are two criminal statutes that are relevant to this matter: The bribery statute and the illegal gratuity statute. If Senator CRANSTON had acted in exchange for the contributions, that would constitute a bribe and would merit expulsion. Proving bribery requires evidence of corrupt intent, and the committee does not have evidence proving Senator CRANSTON had such.

The illegal gratuity statute, by contrast, requires proof that a Senator acted because of a personal benefit. While it is not necessary to establish corrupt intent, it is a necessary element of the crime that there has been a personal benefit. In this case, there was no personal benefit.

However, there are standards governing this institution which are not limited to the letter of the law or Senate rule. While unwritten, these are sufficiency well established in resolutions, relevant statutes, Senate disciplinary cases, and norms of the Senate, including actual conduct of individual Senators, to provide notice to Senators of their ethical obligations in conducting their activities. As Senator Stennis noted on the floor of the Senate in 1968, the Senate has recognized that the existence of rules by this body did not "replace that great body of unwritten but generally accepted standards that will, of course, continue in effect."

The Senate has repeatedly disciplined its Members for conduct that was improper, regardless of whether it violated any specific law or Senate rule or regulation. In this case, the committee spelled out the relevant standards of conduct at some length in its report on the investigation of Senator CRANSTON. To hold that standards governing improper conduct must be in writing with all the "t's" crossed and the "i's" dotted ignores the practice of the past and the necessity to continue that practice in the future to protect the integrity of the Senate.

Senator CRANSTON also asserts that the committee's action sanctions him for constituent services and fundraising practices that are the same as many other Senators. This is an especially troubling defense because, by citing the unspecified conduct of unnamed Senators, it smears every Member of this body and the institution as a whole.

Ironically, while pernicious, this defense is also difficult to take seriously inasmuch as the Senator misstated the standard of conduct against which he was judged by the committee and ignores the relevant facts. In essence, Senator CRANSTON concludes that the committee only found coincidental linkage in time between his fundraising from and official actions on behalf of Lincoln, and concedes only that he created an appearance of impropriety. It follows, therefore, that the similar practices he asserts that the other anonymous Senators engaged in also involve only linkage in time. The reality is that the committee's findings and conclusions are not limited to coincidental linkage in time, but reach to a pattern of conduct over an extended period of time which included actual linkage by the Senator himself.

Neither the Committee on Ethics, nor I personally, are aware of any situation where another Senator has engaged in the pattern of fundraising and official action that the committee found in this case. If the Senator has such evidence, he should bring it to the attention of the committee.

Senator CRANSTON's unique actions merited the committee reprimand. I recognize the Senator's fine service to this country and that he has expressed remorse for his conduct. But after listening to his presentation on November 20, I regretfully must say that the only remorse I discern in Senator CRANSTON is remorse that he has been held publicly accountable for his actions.●

CRANSTON RESPONSE TO RUDMAN STATEMENT

● Mr. CRANSTON. Mr. President, I ask that a statement released by Prof. Alan M. Dershowitz regarding Senator RUDMAN's additional statement be printed in the RECORD, along with the text of the materials I submitted to the Senate on November 20, which includes my written submission in response to the committee's February 27, 1991 resolution, dated April 22, 1991, and my written response to the Ethics Committee's November 20, 1991, resolution for committee action, dated November 20, 1991.

The material follows:

RESPONSE TO SENATOR RUDMAN

Professor Alan M. Dershowitz of Harvard University issued the following statement in response to an "additional statement" by Senator Warren Rudman:

"Senator Alan Cranston has responded fully and with documentary support to all the allegations made previously by the Senate Select Committee on Ethics and repeated personally by Senator Rudman. Senator Cranston's responses and his supporting documents appear in the Congressional Record of Nov. 20.

"I wish to add only the following brief response. It is important to reiterate that the entire Committee explicitly found that all the contributions at issue were, in and of themselves, legal and proper. The Committee also explicitly found that the constituent services performed by Senator Cranston were legal and proper, and violated no law or Senate rule in and of themselves. Even more significantly the entire Committee found that Senator Cranston received no personal benefit, and found no evidence that his actions were caused by any contributions. In other words, there was no quid pro quo.

"I hope that these findings will now put this matter to rest and that Senator Cranston can now get back to completing his distinguished 24 years of service in the U.S. Senate."

[U.S. Senate Select Committee on Ethics]

WRITTEN SUBMISSION IN RESPONSE TO THE COMMITTEE'S FEBRUARY 27, 1991, RESOLUTION

(Senator Alan Cranston, U.S. Senate, Washington, DC, April 22, 1991)

I—INTRODUCTION AND SUMMARY OF MY WRITTEN SUBMISSION

This submission constitutes my response to the Statement and Resolution issued by the Select Committee on Ethics on February 27, 1991.

I have prepared this submission personally because, as you know, I cannot afford to continue to employ legal counsel.[1] Treatment of my prostate cancer made it impossible for me to defend myself during the public sessions of the Committee last November, December and January, and to communicate with my attorney in the way that the other four Senators who were under investigation could. I am pleased to have this opportunity to clear up certain false impressions that the hearings created and to point out inaccuracies, omissions and inappropriate inferences in the February 27, 1991 Committee documents.[2]

It is my understanding that the substantive issue is whether there is "clear and convincing evidence" of a causal connection between my official actions and donations—most of them charitable—that I collected for others.

I will show that there is *no direct evidence* of any such casual link. I will cite clear and convincing evidence that there were other causes—very legitimate causes—for my official actions.

The Resolution *infers* a casual connection from the proximity in time between the charitable donations and the official actions. Proximity in time is *not* clear and convincing evidence that the charitable donations caused my official actions. The Resolution's *inference* of a casual connection cannot survive dispassionate, reasoned analysis. It cannot be a substitute for clear and convincing evidence. The inference is particularly inappropriate and unfair given that my conduct was *not different in kind*, as I will show, from that of other Senators who have been under inquiry. The Resolution did not draw such adverse inferences against them.

In retrospect, I can see that the proximity in time between the charitable donations and the official actions could lead to an appearance of impropriety where no impropriety existed. I wish I had foreseen this development—I have always endeavored to avoid appearances or actions that could reflect adversely upon the Senate or myself.[3]

I acknowledge and I accept the consequences of an appearance of impropriety due to proximity of time.

However, since timing and appearances did not warrant institutional action in the cases of the other Senators, it should not in my case.

The Senate has never set standards *of any kind* governing the timing of contributions of any kind in relationship to legitimate constituent services. I fully recognize that if a Senator engages in conduct that is inimical to generally accepted and understood standards and values, the Senate has an obligation to find that Senator guilty of improper behavior, although his conduct does not violate a specific law or Senate Rule. There is no evidence that I engaged in any improper conduct.

Without clear and convincing evidence of actual impropriety, there is no justification for subjecting me to disciplinary action. There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate has *never* determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful donation to the Senator's campaign or to a charity the Senator supports. To do so now would be contrary to the principles of the Senate and a violation of traditional concepts of fair play by proceeding in an *ex post facto* fashion.

In every case of financial impropriety considered by the Senate through its history, the alleged misconduct was the use of public office for a Senator's *private* profit. Neither any member of my family nor I received any compensation or personally benefited in any way from these charitable contributions. I had no financial interest in Lincoln Savings, its parent, or affiliates. I received no income from it.

I will discuss the Special Counsel's proposal to extend to Senators the appearance standard in the Code of Ethics for Government Service that applies to federal judges and civil servants. The Senate has never adopted that code as an ethical standard applicable to Senators. There is no reference to it in any of the over 400 published Interpretative Rulings issued by the Senate Committee on Ethics. The Special Counsel overlooks fundamental differences between federal judges and civil servants. Federal judges and civil servants do not have to raise funds to stay in office. A judge is not expected to serve the interest of the parties before him. A Senator is expected to *represent* this constituents, and to be—and to appear to be—responsive to their legitimate needs. Senators should not be a risk of discipline for violation of an appearance standard that would prevent us from intervening on behalf of constituents, contributors and non-contributors alike, when intervention is appropriate.

I want to clarify a crucial point that apparently was not made sufficiently clear during the hearings. I refer to my charitable fund-raising activities intended to increase voter participation. More than 10 years ago, the facts about the deplorable decline in voter participation in the United States came to my attention. I was appalled. It struck me that the very essence of our democracy was at risk as fewer and fewer Americans—particularly our youth—participated in the democratic process.

I discovered that one of the reasons for the voter fall-off was our antiquated and frequently onerous registration laws, which tend to discourage voting—especially among some of our minority populations. I was determined to do something about it.

I wrote articles. I gave speeches. I introduced legislation calling for reform But until reform could take place, the only effective action I could take was to support nonpartisan voter registration efforts across the country. The I.R.S. granted tax exempt status to donations for this cause. The I.R.S. regulates the donations to charitable organizations. To qualify for tax exemption, organizations must meet and continue to satisfy established criteria.

Enhancing voter participation became my personal crusade. In 1986, I directed much of my time and energy to it in addition to my Senatorial duties and my Senate reelection campaign. I increased my efforts in the 1987–1988 campaign cycle because in the 1986 election, turnout dropped so low that over 62% of the national electorate failed to vote. Both parties "lost" the election—Democrats received only 18.9% and Republicans only 17% of the eligible votes.

Volunteering my time and effort, I raised $7,610,000 for voter participation programs in 1987–88. $6,415,230—84.3% of the total—was in the form of I.R.S. approved tax-deductible charitable donations for non-partisan voter participation 501(c)(3) organizations throughout the country. Although I accepted the checks on behalf of these organizations, I

Footnotes at end of article.

had no control over how the money was to be spent. The remainder of the donations went to support efforts to raise charitable donations for I.R.S. approved nonpartisan voter participation groups.

This project required an annual operating budget of $250,000 and necessitated the establishment of America Votes (later known as USAVotes), an organization with a staff of three to five people. Two hundred sixty-four individuals, foundations, unions, associations and corporations donated to this cause. Mr. Keating was not the largest donor, nor the only donor with a pattern of multiple giving.[4]

I strongly urge the Committee to take the time to understand the differences between the charitable donations I raised from Mr. Keating to increase voter participation and the political contributions raised from Mr. Keating by the other four Senators. These charitable donations—unlike political contributions—were of no direct benefit for me. They were made after my 1986 reelection. Senate Rule 37 expressly permits Senators to engage in fund-raising for charities, and many members quite properly do so. The Committee acknowledged in its Statement that my solicitation and acceptance of charitable donations by Mr. Keating was legal and did not constitute a personal gift.

The Committee also acknowledges that political contributions are "a fact of life". Large campaign war chests are often the largest factor in winning—and keeping—a Senate seat. Mr. Keating raised and contributed more political contributions to the campaigns and P.A.C.'s of each of the other four Senators, who had direct control over these contributions, than he did to mine.

Mr. Keating was an acknowledged big giver: a big contributor in the political arena and a big donor in the charitable arena. He gave and loaned more than $44 million to Mother Teresa, Covenant house, the St. Vincent de Paul Society and anti-pornography drives. He gave and raised huge sums for political campaigns and candidates such as the $200,000 he gave to Senator Glenn's P.A.C. and $100,000 he contributed to George Bush's Team 100.

The Committee Resolution pertaining to me is in two parts: first, four "occasions" and questions related thereto about my official actions and fund-raising on behalf of charitable and related organizations; and, second, three questions concerning certain actions of Ms. Joy Jacobson, who through most of the time in question, was employed part-time by USAVotes to assist in raising charitable donations. I will examine each of these questions in detail. I will show that the Resolution is inaccurate, unfair and misleading in many of its statements with respect to these questions.

I respectfully, but urgently, request all members of the Committee to review the Resolution carefully and thoroughly in light of this submission.

When viewed fairly and impartially, the evidence regarding these charitable and related donations shows that at most there may have been some proximity of timing to official actions, and consequently perhaps bad judgment and an appearance of impropriety—but nothing more.

I will cite the evidence in the record that shows similar instances of proximity of timing between official actions and the receipt of political contributions—not charitable donations—by Senators DeConcini, Glenn and Riegle. In their cases, the Committee drew no inferences about and made no findings of any causal connections.

The Committee found that the conduct of Senators DeConcini and Riegle gave the appearance of being improper and was "attended with insensitivity and poor judgement"—but nothing more. The Committee voiced no criticism of Senator Glenn for his conduct in this respect.

There simply is no evidence establishing a difference in kind between my actions and the actions of Senators DeConcini, Glenn and Riegle—except that the money they raised was for their own political use, while the money I raised was charitable and for the use of others. It was not for my use.

Since there is no differences in kind between my actions and the actions of the others Senators, treatment of my actions should not differ in kind from treatment of their actions.

I will show that all five Senators have varying degrees of involvement concerning Lincoln Savings. In some respects, some Senators were more involved that I.

Regarding the activities of the USAVotes employee cited in the Resolution, I will show that she was not under my direct supervision. I also will show that, contrary to assertions in the Resolution, her activities were separate and distinct from my Senate office; that in at least one instance her solicitation of funds from Keating was made without my prior knowledge; that the Special Counsel drew unfair and inaccurate inferences from memoranda she wrote; that she did not repeatedly schedule and attend meetings between contributors and myself in which legislative or regulatory issues were discussed; that she did not engage in substantive discussions and never influenced, or attempted to influence, any official decision or action of my staff's or of mine; and that she did not serve as an intermediary for Messrs. Keating or Grogan but simply passed messages along occasionally when they were unable to reach me or members of my Senate staff.

I grant that some of Ms. Jacobson's activities were susceptible to creating an appearance of impropriety. Some of her memos were written carelessly, without thought to appearances. I should have realized that when I read them. But, in the press of my heavy and hectic Senate workload, I failed to do so. Some of her actions likewise could lead to false impressions. I failed to realize that at the time. I will show, however, that her testimony demonstrates that she understood very well that there must be no connection between official actions and donations, no quid pro quo. Like my own activities, her activities do not provide any evidence of a causal connection between my official actions and solicitation of donations. Certainly none of her activities can warrant that the Committee recommend institutional action against me.

I deeply regret that I failed to foresee that soliciting charitable donations close in time to official action could lead to an appearance of impropriety.

I regret that I did not constrain more closely the actions of the part-time employee of USAVotes.

I concede these errors, but these were errors in judgment, not in intent.

II—MY ANSWERS TO THE COMMITTEE'S FOUR QUESTIONS RE: POSSIBLE CAUSAL CONNECTIONS BETWEEN CHARITABLE DONATIONS AND OFFICIAL ACTIONS

Section (a)(1) of the Resolution cites four occasions when fund-raising and official actions were allegedly in "close connection". There may have been some proximity in time upon these occasions. There is no evidence of a causal connection. There is evidence to the contrary.

The following examines each occasion, quoting the question in the Resolution and then analyzing what the record shows about: first, the evidence regarding charitable and related donations; second, evidence regarding any official actions my staff or I took; and, third, evidence showing that there were indeed no cause and effect relationships between Mr. Keating's donations and my actions.

A. Paragraph (a)(1)(i)

Paragraph (a)(1)(i) states: As a result of a solicitation from Senator Cranston in early 1987, Mr. Keating, on March 3, 1987, contributed $100,000 to America Votes, a voter registration organization. This contribution was made during the period leading to Senator Cranston's participation in the April 2 and April 9 meetings with Federal Home Loan Bank Board Chairman Edwin J. Gray and the San Francisco regulators.

(i)1. *Donation:* The Resolution accurately notes that a donation was made on March 3, 1987, to America Votes. (Sp. Coun. Ex. 159). America Votes (later known as USAVotes) raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

2. *Official Action:* The Resolution is inaccurate and very misleading in stating that this donation was made during the period leading to my participation in the April 2 and April 9 meetings.

The evidence is undisputed that the donation was discussed, solicited and committed on or before February 24, 1987. (Stein Affidavit, Sp. Coun. Ex., 458, para. 14); (AC, 4/30/90, p. 119). The donation check was dated March 3, 1987. (Sp. Coun. Ex. 159). The evidence shows that I knew nothing about the proposed meetings before the second half of March, and perhaps not until the last week in March. (JG, 12/15/90, p. 88); (AC, 4/30/90, p. 119). Furthermore, the preponderance of evidence shows that the meetings first were conceived after the donation was solicited and received. (Gray, 2/23/90, p. 15; 11/29/90, p. 64); (Grogan, 12/12/90, pp. 56–58, 208); (Riegle, 1/7/91, pp. 29–32, 46–9. 51–55, 101–2, 163); (DeConcini, 1/9/91, pp. 45–6, 49, 51–2, 60–63, 199–200, 203, 209); (McCain, 1/4/91, pp. 27–21, 26, 111, 163–4); (Glenn, 1/4/91, pp. 240–47, 193).

The evidence shows that the April 2 meeting date was not set until a few days prior to the event. (Gray, 2/23/90, p. 15). The evidence shows that the second meeting on April 9 grew out of the April 2 meeting. The evidence shows that I played a very minor but proper role in the April 2 meeting. I asked why the audit was taking so long and agreed with Senator Glenn that if Mr. Keating had broken any law he should be prosecuted, but if he hadn't the regulators should get off his back. (AC, 4/30/90, pp. 131, 133); (Gray, 11/27/90, p. 51). The evidence shows that my participation in the April 9 meeting was essentially limited to sticking my head in the door for a minute. (AC, 4/30/90, p. 150); (Sp. Coun. Ex. 193).

3. *No Causal Connection:* The Committee's findings conclude that each of the five Senators had information that reasonably caused concern about the fairness of the Bank Board's examination of Lincoln and that was sufficient to justify contacting Bank Board personnel. (Committee Statement, 2/27/91, p. 1, para. 4). The Committee found that, without regard to donations or other benefits, no Senator violated any law or Senate rule by attending the April 2 and

9 meetings. (Committee Statement, 2/27/91, p. 1, para. 1).

The evidence shows that in that point in time all five of us had good reason:

To view Mr. Keating as a highly successful and respected businessman.

All five of us also knew that:

Alan Greenspan, who is now the Chairman of the Federal Reserve, had stated in his opinion that Lincoln was solvent for the foreseeable future. (Sp. Coun. Ex. 159); (AC, 4/30/90, p. 101).

Arthur Young, one of the "Big Eight" accounting firms, had found Lincoln to be in good shape and was very critical of the regulations.[5] (Sp. Coun. Ex. 161); (AC, 4/30/90, pp. 99–100).

I had several additional reasons to be concerned about the fairness of the Bank Board's examination of Lincoln:

Lincoln was a California-chartered Savings and Loan. Many thousands of its employees and depositors were my constituents. Their jobs and financial security were at risk.

I was aware—as perhaps the other Senators were not—that the Arthur Anderson firm, another of the "Big Eight" accountants, had found Lincoln to be in good shape and had grave questions about the performance of the regulators. (AC, 4/30/90, p. 102).

I previously had engaged in a confrontation with Mr. Gray, the Chairman of the Bank Board, and had the clear impression that he was incompetent. (AC, 4/30/90, pp. 106–9).

Mr. Gray had worked in public relations for a savings and loan institution in San Diego, California, before he was appointed to chair the Bank Board. I knew he had a poor reputation in the San Diego business community. (AC, 4/30/90, p. 107).

I knew that a principal newspaper in California, the Los Angeles Times, had called for Mr. Gray's resignation from the Bank Board after the General Accounting Office found he had misused $27,000 of public funds. (*Id.*; Cranston Ex. 57); (AC, 4/30/90, p. 92).

Thus the *evidence is overwhelming* that (a) I had many sound and official reasons to participate in the April meetings, where I played a very minor and proper role, and (b) the donation was solicited and received weeks before I knew of the April meetings. The preponderance of the evidence shows that the donation was solicited and received before *anyone* even conceived of the meetings.

There is no evidence—nor could there be—that I attended the April meetings because of the donation.

B. Paragraph (a)(1)(ii)

Paragraph (a)(1)(ii) states: In the fall of 1987, Senator Cranston solicited from Mr. Keating a $250,000 contribution, which was delivered to the Senator personally by Mr. Keating's employee James Grogan on November 6, 1987. When the contribution was delivered, Mr. Grogan and Senator Cranston called Mr. Keating, who asked if the Senator would contact new Federal Home Loan Bank Board Chairman M. Danny Wall about Lincoln. Senator Cranston agreed to do so, and made the call six days later.

(ii) 1. *Donation:* There was not one but two donations that were delivered on November 6, 1987. The Resolution omits any description of them, and fails to make clear that these were *not* political contributions to any campaign of mine or to my P.A.C. I received no direct political benefits from the donations.

$225,000 was in the form of a charitable donation to Forum Institute, an I.R.S. approved 501(c)(3) tax-deductible organization. Forum distributed funds to non-partisan, 501(c)(3), grass roots organizations that registered voters in approximately 20 states. (Sp. Coun. Ex. 145). I accepted the check on behalf of Forum and turned it over to Forum. I had no control over Forum or how the money was used. The independent officers and directors of Forum had that control. (Harmon Affidavit, Sp. Coun. Ex. 501, para. 13).

$25,000 was in the form of a contribution to USAVotes (formerly America Votes) to support its efforts to raise charitable donations for I.R.S. approved 501(c)(3) non-partisan registration groups. (Sp. Coun. Ex. 146).

The Resolution also fails to mention that the donations were agreed to before October 6, 1987 (Sp. Coun. Ex. 182), more than a month prior to my status inquiry call to Mr. Wall.

2. *Official Action:* My notes about the call to Mr. Wall establish that it was a status inquiry.[6] I asked if the end of the audit of Lincoln was in sight. Mr. Wall and I also discussed the personality problems between Lincoln and the San Francisco regulators. (Sp. Coun. Ex. 147). Mr. Wall's testimony confirmed this. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.). Mr. Wall also testified that I did not urge him to take any particular course of action. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.).

Furthermore, there is *no* evidence that I attempted to influence the regulatory actions of Mr. Wall *or any other* regulator at any time. Every regulator who was called as a witness or in an affidavit testified that none of his or her sections were influenced by any contact from my office or from me. (Wall Affidavit, Sp. Coun. Ex. 428, p. 6, para. 9); (Rosemary Stewart, 1/2/91, pp. 10–11, 196); (Wall, 12/4/90, pp. 104, 116, 181–2, 184, 191); (Martin, 12/3/90, p. 58; Martin Affidavit, Sp. Coun. Ex. 17, para. 11); (Gray, 11/27/90, p. 97); (Patriarca, 11/27/90, p. 147); (Black, 12/6/90, pp. 29–30); (Cranston Ex. 78, Dochow Aff. Attachments A–1 at 19–20 & A2 at 41).

3. *No Causal Connection:* It flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for anyone to donate or contribute *anything* to me in order to get me to do *anything*.[7]

The routine status call that I made to Mr. Wall on November 12 was not motivated by the personal concerns of Mr. Keating. The jobs and financial security of thousands of my California constituents were at stake. I made the call for the same reason that I attended the April 2, 1987 meeting—because I believed it was necessary and proper that I do so on behalf of my many constituents who had stakes in Lincoln.

The Resolution is incorrect in concluding that Mr. Keating asked me to contact Mr. Wall when I was on the phone with him in Mr. Grogan's presence. At best, there is conflicting testimony on this point. (AC, 4/30/90, pp. 188 & 190); (JG, 12/14/90, p. 162). I do not recall a request from Mr. Keating on November 6 that I call Mr. Wall. *Nor* do I recall that my November 12 call to Mr. Wall was the result of a request from Messrs. Keating or Grogan.

The Resolution implies that there was a causal connection between the receipt of the donations and my decision to call Mr. Wall on November 12. There is *no* evidence to support such a conclusion.

Furthermore, Mr. Grogan testified that there was never "any suggestion, either by word or by body language, or by a raised eyebrow" that my interest in Lincoln's problems was tied to Mr. Keating's support of non-profit voter registration efforts. (JG, 12/15/90, p. 132). Mr. Grogan also testified, "There was never an occasion where Mr. Keating asked Senator Cranston to do something and Senator Cranston said, 'only if you raise funds for me.' There was never an occasion where Mr. Keating said, 'If you do this for me, I will raise X amount of dollars for you.'" He testified that there was never "even the suggestion" that fund-raising and official actions were connected in any way. (JG, 12/12/90, pp. 185–8). I repeatedly have testified that there was no connection between Mr. Keating's donations and my decisions to contact the regulators regarding Lincoln. (AC, 4/30/90, p. 95).

C. Paragraph (a)(1)(iii)

Paragraph (a)(1)(iii) states: In January 1988, Mr. Keating offered to make an additional contribution and also asked Senator Cranston to set up a meeting for him with Chairman Wall. Senator Cranston did so on January 20, 1988 and Chairman Wall and Mr. Keating met eight days later. On February 10, 1988 Senator Cranston personally collected checks totaling $500,000 for voter registration groups.

(iii) 1. *Donation:* The Resolution incorrectly insinuates that (a) in January, 1988, Mr. Keating offered to make an additional charitable donation in connection with his asking me to set up a meeting for him to meet with Mr. Wall; and (b) based on my setting up the meeting, Mr. Keating made charitable donations in February. The Resolution's insinuation is unfair and inaccurate and cannot be substantiated in any way.

There is *no* clear and convincing evidence that Mr. Keating offered to make an additional donation in January, 1988.

Mr. Keating did make two charitable donations to voter registration groups on February 10, 1988 in Phoenix. The Resolution omits the fact that these were two I.R.S. approved charitable, tax-deductible donations to 501(c)(3) organizations for non-partisan, voter participation efforts. One was to Forum Institute, an organization I've already described. The other was to The Center for Participation in Democracy, that engaged in and supported non-partisan registration drives in several states. *Neither* of these two organizations, nor the use of the money, was under my control.

Regarding this period, there is considerable testimony about a dinner I attended in January with Messrs. Keating, Grogan, and others. Mr. Grogan testified that he recalls no discussion of fund-raising at the dinner. (JG, 12/14/90, p. 166; 12/13/90, p. 24 & p. 265). My son, Kim Cranston, who was present, testified that he recalls no specific offer of support by Mr. Keating. (KC, 6/28/90, p. 15). I testified similarly that (a) I did not solicit any funds at the dinner, (b) that I did not recall the discussion of any specific funds, and (c) that Mr. Keating may have indicated in a *vague* way that he would continue to support registration efforts. (AC, 4/30/90, p. 191; 10/16/90, p. 87).

Mr. Grogan testified that he was not aware of any solicitation that preceded my February 10 visit to Phoenix. (JG, 12/13/90, pp. 261–2).

My visit to Phoenix had been in the works since at least September of the previous year. (JJ, 12/3/90, pp. 164–6). Messrs. Keating and Grogan had a long standing policy of inviting members of Congress, their staffs, and others to visit Phoenix to see the Lincoln/American Continental Corporation operation first hand. Many Congressmen and staff members have visited his company in Phoenix. Mr. Grogan testified that he had invited me to visit Phoenix several times. (JG, 12/14/90, pp. 169–70; 12/15/90, pp. 119–20). I had want-

ed to visit to see for myself the type of operation Mr. Keating was running. (AC, 4/30/90, p. 184). This was the first time that my schedule permitted this trip. (JJ, 7/19/90, p. 167); (JG, 12/13/90, p. 17). Ergo, this trip *was totally coincidental* to the Wall/Keating meeting. It *had no connection* with the Wall/Keating meeting.

It is also equally coincidental that this trip finally occurred at the beginning of a new year, and thus coincided with the timing implicit to Ms. Jacobson's practice of seeking contributions from individuals twice in a given year—early and late. (JJ, 12/2/90, p. 161). Ms. Jacobson, in her capacity as a part-time USAVotes employee, had written me a memo dated February 4, 1988, stating that the main goal concerning Mr. Keating was to receive a charitable donation as soon as possible so that he could be asked for an additional donation in the fall. (Sp. Coun. Ex. 269). She testified that the timing of solicitations of donations was largely driven by her own timetable and that charitable giving is based on an annual cycle. (JJ, 12/3/90, pp. 176, 219).

By happenstance, this trip to Phoenix was also consistent with my practice of going to visit potential donors—rather than inviting them to visit me—to get help for the registration efforts. (AC, 10/16/90, p. 87); (JJ, 12/3/90, p. 143).

2. *Official Action:* There is no evidence that Mr. Keating committed to make a specific donation in connection with asking me to set up an appointment with Chairman Wall to see him.

The evidence shows only that Ms. Jacobson sent me a memo dated January 18, 1988 relaying a request to her from Mr. Grogan that I help schedule a meeting between Messrs. Keating and Wall. (Sp. Coun. Ex. 172).

I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

3. No Causal Effect: Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4).[8]

There is no evidence of a causal connection between my January 20, 1988 telephone call and the charitable donations. There is no specific evidence that there was even a solicitation of Mr. Keating or a discussion of any donation prior to the February 10, 1988 trip.[9] In fact, for six months there had been efforts to schedule a trip to Phoenix that finally occurred in February, 1988 and resulted in the receipt of charitable donations. *It is pure coincidence* that the trip finally was scheduled and the donations were received three weeks after my telephone call to Mr. Wall.

Coincidence in time and unsubstantiated inferences about proper inquiries such as my telephone call and receipt of charitable donations on a trip that had been in the making for many months cannot properly substitute for the lack of clear and convincing evidence of improper linkage, particularly where there is factual and convincing evidence that Mr. Keating did not ask me to set up a meeting in connection with a solicitation of a donation of any type.

D. Paragraph (a)(1)(iv)

Paragraph (a)(1)(iv) states: In early 1989, at the time that Senator Cranston was contacting Bank Board officials about the sale of Lincoln, he, personally or through Joy Jacobson, his chief fund-raiser, solicited another contribution. (This contribution was never made. American Continental Corporation declared bankruptcy on April 13, 1989.)

(iv) 1. *Donation:* The Resolution fails once again to point out that this was a solicitation of an I.R.S. approved 501(c)(3) charitable tax-deductible donation, the use of which I did not control. It was *not* a solicitation of political contributions for my benefit. The Resolution accurately states that this donation was never made.

The Resolution's description of Ms. Jacobson is misleading. In early 1987, she directed the fund-raising staff of the Democratic Senatorial Campaign Committee. At the time in question, early 1989 (and for more than a year before that) she was spending 50% of her time as a consultant to the Democratic Senatorial Campaign Committee; 25% as a consultant to a P.A.C. I founded (Committee for a Democratic Consensus); and 25% as a consultant under contract to USAVotes to raise charitable donations for registration efforts.

Mr. Rob Stein, the Executive Director of USAVotes, was in charge of its over-all operations. I was one of three cochairmen of USAVotes. I was not the direct supervisor of Ms. Jacobson in her capacity as a part-time employee of USAVotes, nor was I the direct supervisor of any other USAVotes employees.

There is conflicting testimony concerning who solicited Lincoln at this time. I have testified that I do not recall discussing a donation with Messrs. Keating, Grogan or anybody during this period. (AC, 10/16/90, p. 68; 5/17/90, p. 299). I do not believe such a discussion ever took place. Mr. Grogan, when asked whether anybody on my staff or I solicited a donation from him or Mr. Keating during this period, testified that Ms. Jacobson, not I discussed a donation with him. (JG, 12/14/90, pp. 179–80). Ms. Jacobson's recollection was that I solicited Mr. Keating during the period. (JJ, 12/3/90, pp. 167–8).

I believe the following shows that Ms. Jacobson initiated the solicitation and that she did so without my knowledge.

A memorandum from Joy Jacobson to me and to Rob Stein, the Executive Director of USAVotes, dated March 1, 1989, written on her home computer, shows that I did not make the solicitation and illustrates the mechanics of how the staff of USAVotes and I worked to solicit charitable donations. (Sp. Coun. Ex. 171). It was Ms. Jacobson's job to come up with the names of people, foundations and organizations which she thought would be potential donors. She would write a memorandum with the potential donors' names, suggestions as to who should contact them, and the amounts to be requested. When I reviewed it, I would look down the list for the names suggested for me. I would systematically try to call most, but not necessarily all, of the names suggested to me. When my part of the list was complete, I would hand it back with my notes about the calls to my secretary. She would report these results back to Ms. Jacobson.

There are 18 names of potential donors on the March 1, 1989 memo. My handwritten notes or my secretary's notes appear under 12 of those names—only those that were proposed as my assignments.

It is clear that Ms. Jacobson assigned herself three names on the first page: AFSCME, Dick Darling, and Charlie Keating. After Mr. Keating's name these words are typed in the memo: "Joy is talking with Jim Grogan. 100,000 wherever it's needed."

This evidence corroborates Mr. Grogan's testimony that Mr. Jacobson, not I, made this solicitation. It indicates that her memory was incorrect when she testified that I solicited Mr. Keating. It shows that on the date of the memo, March 1, 1989, she had already discussed a $100,000 donation with Mr. Grogan.

Ms. Jacobson's solicitation of Mr. Grogan is consistent with her explanation in her testimony "that the first group you go back to [at the beginning of each year is] your past donors and try to renew them." (JJ, 12/3/90, p. 161). Her solicitation of Mr. Grogan on her own is further evidenced by Ms. Jacobson's statement that "the timing of the fundraising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was." (JJ, 12/3/90, p. 176). She also stated that I never suggested to her to time any request for a donation to coincide with anything before the Bank Board or with any other event or events. (JJ, 12/3/90, pp. 175–6).

2. *Official Action:* The record shows that, working on an entirely different track from Ms. Jacobson, I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine.

For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approxi-

mately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

In response to the inference I point to the clear and convincing evidence that (a) I did not solicit a charitable donation, and that (b) I did not know that Ms. Jacobson had made a solicitation until I read her memo of *March 1, 1989*. Once I knew, the knowledge had no effect on my conduct.

Ms. Jacobson testified that she was not aware that Messrs. Keating or Grogan was talking to me about the sale, nor that I was being asked to do anything about it. (JJ, 7/19/90, p. 179).

There is absolutely no evidence of any causal connection between (a) Ms. Jacobson's solicitation, and (b) my telephone calls in 1989 to regulators regarding possible sales of Lincoln. Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action.

The *fair inference* from the record is that Ms. Jacobson was on one track following up according to her standard practice with one of the few established contributors whom she solicited personally and regularly at the beginning of each year. Meanwhile, I was on another track taking very limited official actions contacting regulators regarding the possible sale of Lincoln—actions for which there was clear and independent constituent related justification. Senator DeConcini made the same type of inquiries for similar reasons.

The foregoing analysis of each of the four "occasions" cited in the Resolution demonstrates that there is absolutely no evidence of a causal relationship between any of Mr. Keating's donations and any of my actions, and that there is overwhelming evidence to the contrary.

I remind the Committee again of Mr. Grogan's response when my attorney asked him the following question: "Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keating's support of the non-profit voter registration efforts?" Mr. Grogan replied, "Never." (JG, 12/15/90, p. 132).

The Special Counsel has cited no evidence that Mr. Keating authorized donations only on condition that I would help him, or because I had helped him. He cited no evidence that I agreed to help only if Mr. Keating contributed.[10]

III—MY ANSWERS TO THE COMMITTEE'S THREE QUESTIONS RE: A PART-TIME EMPLOYEE OF AN ORGANIZATION THAT RAISED I.R.S APPROVED 501(C)(3) CHARITABLE DONATIONS

The Resolution raises questions in Section (a)(2) about my Senate office practices, citing three examples of activities engaged in by Ms. Jacobson, a part-time employee of USAVotes, over whom I had no real supervisory role. I have already indicated that she was *not* a member of my Senate staff. She had no substantive expertise in Banking Committee issues and did not substantively involve herself in my official Senate activities.

The words "Senate office practices" is inaccurate and misleading. Ms. Jacobson came to my office occasionally, but by no means frequently or regularly. She worked out of her home in Virginia. Unlike the practice in some Senate offices, I have never assigned major political fund-raising responsibilities to anyone serving part time or full time on my Senate staff. I have designated two Senate staff members under Rule 41, but they have done comparatively little political fund-raising. All fund-raising efforts with which I have been involved, whether political or charitable, have been the responsibility of individuals employed elsewhere—*not* in my Senate office.

Although some of Ms. Jacobson's activities are susceptible to an interpretation that they rise an *appearance* of impropriety, they do not constitute clear and convincing evidence of a causal connection between (a) my personal official actions and (b) solicitations of donations I made or of which I was aware.

A. Paragraph (a)(2)(i)

Paragraph (a)(2)(i) states: Senator Cranston's fund-raiser repeatedly scheduled and attended meetings between Senator Cranston and contributors in which legislative or regulatory issues were discussed.

The Resolution unfairly uses the word "repeatedly". Mr. Grogan met Ms. Jacobson in 1984. (JG, 12/12/90, pp. 71–73); (JJ, 12/3/90, p. 91, 7/19/90, p. 37). He testified that he would call her to schedule appointments until he became acquainted with members of my Senate staff and began to turn to them to arrange appointments. (JG, 12/12/90, p. 93).

Ms. Jacobson testified that after March, 1987, the only meetings which she was involved in arranging were for fund-raising or social purposes, not substantive purposes. (JJ, 12/3/90, p. 96). She testified that she didn't know about the April 2 and April 9 meetings until long after they occurred. (JJ, 12/3/90, p. 130). She testified that she arranged no substantive meetings during the entire two year period from April, 1987, to April, 1989, during which the other three "occasions" occurred that raise questions of causal connections. [Referred to in Paragraph (a)1 of the Resolution].

The Resolution inaccurately states that Ms. Jacobson scheduled meetings for me. The evidence shows that she had to go through my Secretary or my Administrative Assistant to place appointments on my schedule.[11] (JJ, 7/17/90, p. 76).

Ms. Jacobson's testimony differs from mine about why she attended such meetings. I have testified that Ms. Jacobson suggested to me that it would be helpful for her to be present so she would know what was going on. (AC, 4/30/90, p. 24). She testified that she was there to make sure that the charitable donor felt at home in my hectic and crowded office before I arrived or if I were called away on Senate business. (JJ, 12/3/90, pp. 86–90).

Ms. Jacobson has testified, and I confirm, that she never participated in substantive discussions in any meetings. (JJ, 12/3/90, p. 86). Moreover, Ms. Jacobson testified that she often paid no attention to the subsection discussions: "While a substantive discussion was going on, I often would get up and go make phone calls outside of the office. There's a round table that I often worked at in Senator Cranston's Whip office. While a substantive meeting was going on in another section of the same room, I would be off doing something else." (JJ, 12/3/90, p. 90).

To the best of my knowledge, Ms. Jacobson never attempted to influence an official action in any way. Neither anyone on my staff nor I made a decision of substance based on any actions by Ms. Jacobson.

B. Paragraph (a)(2)(ii)

Paragraph (a)(2)(ii) states: Senator Cranston's fund-raiser often served as the intermediary for Mr. Keating or Mr. Grogan when they could not reach the Senator or Carolyn Jordan, the Senator's banking aide.

The Resolution's use of the word "intermediary" is misleading and unfair. The record shows, as I have just indicated, that Ms. Jacobson did not engage in any substantive negotiations or take any substantive actions. She testified that she simply passed messages along occasionally when Mr. Grogan was unable to reach me or members of my Senate staff. (JJ, 12/3/90, p. 156). Ms. Jacobson testified, "It was Jim Grogan's nature to just keep dialing until he got somebody. Again, it usually had to do with something that was going to happen and he needed to get hold of somebody, whether it was Roy [Greenaway] or Alan [Cranston] or Carolyn [Jordan], and I would say, I'll pass it along." (JJ, 7/19/90, p. 168).[12] Ms. Jacobson also testified, ". . . At the beginning they always did call me. My understanding is that later on they often didn't call me, that they called Roy Greenaway [my Administrative Assistant] or they called Mary Lou [McNeely, my Secretary] directly or they just showed up at the office." (JJ, 7/19/90, p. 164).

C. Paragraph (a)(2)(iii)

Paragraph (a)(2)(iii) states: Senator Cranston received several memoranda from Ms. Jacobson which evidenced her understanding that contributors were entitled to special attention and special access to official services. Senator Cranston never told her that her understanding was incorrect, nor did he inform her that such a connection between contributions and official actions was improper.

The Special Counsel focused on one memo dated January 7, 1987. (Sp. Coun. Ex. 154.) It was written prior to *all* the specific donations referred to in the Committee's Resolution.

Ms. Jacobson did *not* state—as the Resolution indicates—that the individuals she mentioned in her January 7 memo were "entitled to special attention and special access to official services." She said the individuals expected "some kind of resolution" of pending matters. That is exactly what every constituent, whether a contributor or not, rightfully expects from their Senator. That is exactly what every constituent of mine gets, whether he is a contributor or not, to the best of my ability and my staff's ability. Note that Ms. Jacobson did not state that these individuals could rightfully expect a *favorable* resolution. She said they would expect "*some kind*" of resolution.

She explained the meaning and intent of this memo in her testimony. She testified that the individuals she mentioned, like all constituents, were entitled to a response from me as to what, if anything, I was going to do about their problems—not necessarily a positive response or resolution—but *some* response or resolution. (JJ, 7/19/90, p. 99–101; 12/3/90, pp. 204–5). They may not like the response, but they like all constituents are at least entitled to be heard and to be given a decision. That is all Ms. Jacobson advocated and that is all I ever tried to provide.

Furthermore, Ms. Jacobson testified that several individuals mentioned in her Janu-

ary 7 memo, including Mr. Keating, did not get the results they wanted. (JJ, 12/3/90, pp. 205–6). I understand how someone with 20/20 hindsight might question the implication of Ms. Jacobson's words, but my deeds followed the *words*, not the *implications*.

Improper inferences drawn from a memo written by someone else, not by me, *must not be accepted as a substitute* for clear and convincing evidence of causal connections between my official actions and donations.

The only other memos I am aware of from Ms. Jacobson simply passed on information or contained updates on charitable donations.

Moreover, and in fundamental fairness to Ms. Jacobson, I believe that the Resolution *unfairly implies* that she lacked understanding of proper policy regarding donations and official actions. Ms. Jacobson testified that she knew there could not and must not be a quid pro quo between official actions and donations, and that my absolute firm office practice was to have nothing to do with any potential donor who sought to link a donation to official action. (JJ, 12/3/90, pp. 223–4, 239–40).

Specifically, in relation to Lincoln, Ms. Jacobson testified that neither Messrs. Keating, Grogan nor I ever indicated that any donations were made with any understanding that I would do anything in return (JJ, 12/3/90, pp. 175–6):

Q. Did Mr. Grogan ever tell you that the contributions were made with the understanding that Senator Cranston would do anything in return?

A. Absolutely not.

Q. Did anyone whom you knew to be associated with Lincoln Savings or American Continental ever tell you that any of the contributions were made with the understanding that Senator Cranston would do something in return?

A. No.

Q. Did Senator Cranston ever say to you that he thought that the contributions which you have discussed were made with an expectation that he would act in any way on behalf of Mr. Keating, of Lincoln or American Continental?

A. No.

Q. To your knowledge, did Senator Cranston do anything for or on behalf of Lincoln Savings because Mr. Keating assisted his reelection campaign?

A. No.

Q. Did he to your knowledge do anything for or on behalf of Lincoln Savings because Mr. Keating contributed money to USA Votes, Forum Institute or the Center For Participation in Democracy?

A. No.

Q. Did Mr. Keating or anyone associated with him ever tell you that a contribution would be made after Senator Cranston made an inquiry on his behalf?

A. No.

Q. Did Senator Cranston ever tell you or suggest to you that you should time any request for contributions to coincide with anything occurring before the Bank Board?

A. No. In fact, the timing of the fund-raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.

Q. Did Senator Cranston ever tell you to time a solicitation to Mr. Keating to coincide with any other event or events to your recollection?

A. No.[13]

The Resolution inappropriately states that Ms. Jacobson understand that donors were entitled to special access. Mr. Grogan testified that he was able to obtain my attention—in other words get access to me—before any of the charitable donations for voter registration were made by Mr. Keating. (CG, 12/15/90, p. 132)

IV—THERE ARE NO DIFFERENCES IN KIND BETWEEN MY ACTIONS AND THE ACTIONS OF SENATOR DECONCINI, SENATOR GLENN, SENATOR MCCAIN AND SENATOR RIEGLE

There are no differences of kind between my actions and the actions of the other four Senators with respect to Lincoln.

Therefore there is no justification for singling me out for disciplinary action.

The Committee Statement of February 27, 1991 contains many important findings that show both similarities and differences in the actions of the five Senators. The findings include:

1. That, when considered without regard to any donation or other benefit, actions of the other four Senators and my actions did not violate any law or Senate rule.

2. That no solicitation or acceptance of any donation by the other four Senators or myself constituted a personal gift to any one of us.

3. That the other four Senators and I had a reasonable basis for contacting FHLBB personnel.

4. That the attendance of the other four Senators and my attendance at the April 2 and April 9 meetings, when considered without regard to donations, was not improper.

5. That my post-April 9, 1987 conduct and that of Senators DeConcini and Glenn when considered without regard to donations, was not improper; and in and of itself it is not improper to contact regulators after learning of a criminal referral. (DeConcini & Glenn).[14]

6. The Committee found that it may appear improper but actually it is not improper for a Senator to engage in aggressive conduct with regulators especially after learning of a criminal referral. (DeConcini).

7. The Committee found, however, that it was poor judgment but it did not find it unethical for a Senator to arrange a lunch between Keating and Speaker Wright eight months after the Senator knew of the criminal referral. (Glenn).

8. That the solicitation and acceptance by the other four Senators and me of all donations, including those to charitable voter registration organizations, were not illegal or improper.

9. That there are no specific written standards regarding contact with federal regulators in general or on behalf of contributors in particular.

10. That it may appear improper, but the Committee did not find it improper, for a Senator to assist a constituent with regulatory problems at a time very close to when that constituent is raising funds for the Senator. (Glenn and Riegle).

11. By implication, that conduct that is not improper but gives rise to an appearance of impropriety does not warrant further Senate action. (Riegle and DeConcini).

12. That contacts of the other four Senators and my contacts with regulators regarding Lincoln did not cause the eventual failure of Lincoln or the thrift industry in general.

Clearly all five Senators had varying degrees of involvement in respect to Lincoln. Mr. Keating and his friends and associates contributed more political contributions to the campaigns and P.A.C.s of each of the other four Senators, who had direct control over these funds, than to mine. That totals:

Glenn	$252,200
McCain	110,000
DeConcini	85,000
Riegle	78,250
Cranston	59,000

Although I received less in political contributions than any of the other Senators, it appears that I received more because of the charitable donations I raised. This is misleading and can warp an objective observor's perspective. I did not receive the charitable donations. I collected them on behalf of and passed them on to 501(c)(3) charitable organizations.

The fact that when charitable donations are counted I raised more funds from Mr. Keating than any of the other Senators should be considered in several contexts:

The total amount of charitable contributions I raised from Mr. Keating is not unusual in view of his general record of giving and loaning many more than $44 million to various causes including Mother Teresa, Covenant House, the Vincent de Paul Society and anti-pornography drives.

The Special Counsel asked why Mr. Keating, whom he characterized as extremely conservative, would donate to a Democrat such as I and to causes I espoused. F.E.C. records show that Mr. Keating has contributed very large sums to both the Democratic and Republican parties and to many candidates of both parties. Mr. Grogan testified about Mr. Keating's philosophy, "I would not characterize him as a conservative Republican and he doesn't characterize himself that way. He is much more liberal on a variety of issues." (JG, 12/12/90, p. 88).[15]

Regarding charitable contributions, I also want to note that information obtained from Senate financial disclosure forms shows that many Senators are associated in some way—surely including fund-raising in some instances—with I.R.S. approved 501(c)(3) organizations. Among them are the former Majority Leader Robert C. Byrd, now President Pro Tem of the Senate (Robert C. Byrd Scholastic Recognition Fund) and Minority Leader Robert Dole (Dole Foundation for the Employment of People with Disabilities). (AC Exhibit 80).

Coincidences in time between political contributions and official actions were found in respect to three of the other Senators:

The Committee found that Senator Riegle was helping Lincoln with its regulatory problems at the same time that Mr. Keating was raising substantial political funds for him—i.e., $78,250 raised for Senator Riegle's 1988 campaign on March 24, 1987, nine days before the April 2 meeting and after Senator Riegle's apparent involvement in discussions leading to the April 2 meeting. The Committee stated that it did not condone Senator Riegle's conduct and criticized him for "insensitivity and poor judgment"—*but* the Committee did *not* conclude that this coincidence in time between Senator Riegle's fundraising and official actions required institutional action by the full Senate. (Senate Ethics Committee Statement, 2/27/90, Riegle).

The Committee found that Mr. Keating raised $54,000 for Senator DeConcini's November, 1988, reelection, shortly before the Senator made efforts similar to mine although perhaps more "aggressive" than mine (to use the Committee's word)—to make sure the Bank Board gave appropriate consideration to the efforts to sell Lincoln.

The Committee learned that in late 1984 and early 1985 Mr. Keating and his associates made significant political contributions and raised funds for Senator's Glenn's presidential campaign debt and for his Senatorial

campaign. This coincided in time with actions Senator Glenn took at the suggestion of Mr. Keating regarding the direct investment rule in December, 1984, and January, 1985. Senator Glenn testified he did not know about the contributions until the summer of 1985. (Glenn, 1/4/91, pp. 187-8, 226, 255).

The Committee did not conclude that there was any causal connection between these three coincidences of receipt by Senators Riegle, DeConcini and Glenn of these political contributions in proximity of time to their official actions. How, then, could the Committee without *any* substantiating evidence conclude that there was any causal connection between my receipt—on behalf of others—of charitable and related donations and my official actions? My case, like the cases of Senators Riegle, DeConcini and Glenn, *can only involve* questions of judgment and appearances.

I believe, too, that our actions did not differ in kind from legitimate actions of our 95 colleagues. Virtually every Senator raises funds for his campaigns and renders legitimate services to his constituents, including contributors, when they need it. I have noted previously that many Senators are active in one way or another with charitable organizations and some Senators raise very substantial money for them.

V—THERE ARE NO U.S. SENATE RULES, PRECEDENTS, OR CASES IN WHICH A SENATOR HAS BEEN DISCIPLINED FOR ASSISTANCE TO A CONSTITUENT WHEN THE SENATOR RECEIVED NO PERSONAL FINANCIAL PROFIT

If the Committee believes there should be limits on a Senator's ability to perform his official duties for a contributor based upon the timing or proximity of a donation to an official act, it may recommend that change to the full Senate and allow 100 members of this body to debate such a proposed rule.

It would be contrary to the principles of the Senate and a violation of traditional concepts to fair play to apply such a rule to me now *in what would clearly be an ex post facto fashion.*

There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate *never* has determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful contribution to the Senator's campaign or to a lawful donation to a charity that the Senator supports.

The Senate has to date rejected attempts to create Ethics Rules that would restrict the ability of its members to give their supporters the impression that they will be responsive to their needs. There is a *fundamental difference* between a Senator acting on behalf of a constituent and a Senator acting for his personal gain. It is one thing to say that a Senator should not do anything in his official capacity that appears to bring him personal gain. It is quite another to say he should not do anything in his official capacity that appears to benefit supporters or contributors. The former is a conflict of interest and a violation of public trust. The latter is not only *not* a violation of trust, but a fulfillment of it. Its appearance can seem improper only to those who distrust the system itself.

In *every* case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. The last four Senators who were disciplined by the Senate were involved in actions that resulted in *personal* gain. There has *never* been a case that has led to the disciplining of a Senator for assisting, or appearing to assist, a constituent-contributor when the Senator received no personal profit.[16]

The history of conflict of interest rules for the Senate and the House demonstrates that the evil at which all those efforts have been directed is the use of elective office for personal gain.

Senate Rule 37, the conflict of interest rule, distinguishes between personal and political benefit. It prohibits Senators and staffers from intervening with federal agencies for the purpose of furthering their financial interest or receiving compensation from a constituent. Its application is limited to agency intervention "resulting in measurable *personal* financial gain."

The Senate in 1977 rejected a proposed rule suggesting that the motive of a contributor could make a contribution improper. Senator Nelson, Chairman of a Special Committee, had proposed that Rule 35, pertaining to gifts, also should ban acceptance of anything "intended to affect the present or future performance of official duties." Senator Stevens attacked the proposal as "something no one can live up to if he is honest with himself and the American people . . . It is a standard of conduct with which one cannot comply in good faith and good conscience as a member of the U.S. Senate." Senator Nelson finally agreed, saying, "I do not think it makes sense at all, and someone who was working overtime and got tired must have written it." (pp. 144-5, Davidson Legal Counsel Report, March 1991).

The Committee acknowledges in its Statement of February 27, 1991 that the Senate presently has no specific written standards embodied in Senate rules respecting contact with Federal or independent regulatory agency officials. The Committee suggests a process for establishing such standards and states that until that is accomplished "All Senators are encouraged to use House Advisory Opinion No. 1 as a source of guidance for their actions."

House Advisory Opinion No. 1 indicates that it is proper for a member to communicate with an executive or independent agency on any matter to request information or status reports; to urge prompt consideration; arrange for interviews or appointments; express judgments; call for reconsideration of an administrative response that the member believes is not supported by established law, Federal regulation or legislative intent; or perform any other service of a similar nature in this area that is compatible with the criteria expressed in the Advisory Opinion.

The Advisory Opinion makes *absolutely no reference* to campaign contributions or charitable donations, or to the timing of campaign contributions or charitable donations solicited or received by a member who performs any of these approved and specified actions. It notes that it is a felony to seek or receive "compensation for any services rendered."

All my actions with respect to Lincoln were well within the guidelines of House Advisory Opinion No. 1.

VI—THE QUESTION OF APPEARANCES AND A SENATOR'S CONSTITUTIONAL OBLIGATION TO REPRESENT THE PUBLIC INTEREST OR THE CAUSE OF JUSTICE OR EQUITY OF HIS CONSTITUENT

Senator Sanford was quoted in the Washington Post on January 11, 1991, wondering how Members of Congress can "overcome the impression" that it *appears* improper if Members accept donations from constituents for whom they intercede.

This is a perplexing problem, since our basic obligation is to the people we represent, many of whom have supported us financially or in other ways. We must do what we think is right, not just what may appear to be right.

Senators should not be at risk of discipline for violation of an appearance standard that would prevent us from intervening on behalf of constituents when intervention is appropriate. If we act only when no one will criticize us, we will not serve the people who elected us.

The fact that a constituent is a contributor, even a recent contributor, does not make it unethical—and should not make it appear unethical—for a Senator to undertake to render him legitimate help when he needs it. The fact that a constituent is a contributor does not change his need for, nor his right to, a Senator's proper and timely help.

The Special Counsel proposes extending to Senators the appearance standard in the Code of Ethics for Government Service ("CEGS") that applies to federal judges and civil servants. The Senate *never* has adopted "CEGS" as an ethical standard applicable to Senators. CEGS never has been interpreted or applied by the Senate as a standard applicable to Senators. These is *no reference to it* in any of the over 400 published Interpretative Rulings issued by the Committee. The House has referred to it, but only in cases involving personal benefit. To apply CEGS to campaign contributions or charitable donations would be inconsistent with Senate Rules 35 and 37. The definition of a "gift" in Rule 35 specifically excludes campaign contributions. The term "compensation" under Rule 37 strictly has been limited to personal benefits.

The Special Counsel overlooks fundamental differences between federal judges and civil servants and Senators. Federal judges and civil servants do not have to raise funds to stay in office. For them, an appearance of a conflict of interest cannot relate to a campaign contribution. Presumably it will relate to personal financial gain. A judge is not expected to serve the interests of the parties before him, but to judge between them in a neutral and detached manner. He should be, and should appear to be impartial.

A Senator, on the other hand, is a servant of the constituents of his state. The Constitution requires us to *represent* our constituents. A Senator is expected to be and to appear to be responsive to the legitimate needs of his constituents, including his supporters and non-supporters alike. A Senator who attempted to function as a judge would soon be voted out of office. We also differ from federal judges and civil servants because *we are elected by the people.* We do not have life tenure. Senators *must* serve—and *must appear* to serve—the proper interests of the people who support them. If they don't their constituents won't get the help they need and deserve, and the Senators won't be reelected.

Indeed, in 1977 the Senate Ethics Committee warned that financial disclosure was preferable to specific restrictions on conduct because "it is one thing to describe cases that could pose a disturbing conflict of interest, but quite another to formulate a rule that meets the worst cases without becoming unreasonable. A rule designed to prevent a potential conflict of interest may result instead in depriving a Senator's constituents of full representation."

In 1977, the Committee stated that an excessively restrictive rule could "do harm to the legislative process" and "cut to the heart" of a Senator's function. (Davidson, 137). I submit that the adoption by the Sen-

ate of a similarly excessive standard of appearances could deprive constituents of full representation, could harm the legislative process, and could cut to the heart of a Senator's function.

VII—CONCLUSION TO MY WRITTEN SUBMISSION

The Resolution easily could give the erroneous impression to anyone not familiar with the facts that the donations referred to were all of a political nature to some campaign or P.A.C. of mine. It omits any reference to the established and undisputed fact that 85.3% of the money—totaling $725,000—that Mr. Keating donated from early 1987 through April, 1989 was in the form of I.R.S. approved 501(c)(3) tax-deductible charitable donations to organizations that were not under my control and whose use of the money was not under my control.

In addition, Mr. Keating donated $125,000 to America Votes, an organization that raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration in approximately 20 states during 1987 and 1988.

The Resolution fails to point out that *none* of Mr. Keating's donations which are being questioned during this period was in the form of a political contribution to any campaign of mine. Only $10,000 was to a federal P.A.C. that I organized.

The Resolution ignores the important fact that *all* these donations were made *after* my 1986 reelection. An expert on voting, Curtis B. Gans, who is Director of the non-partisan, non-profit, Committee for the Study of the American Electorate, testified that registration efforts in California in 1987 and 1988 that were supported by some of the funds I raised would have had "negligible impact" on my reelection campaign four years later (had I chosen to run in 1992). "I could think of no less cost-effective way of advancing one's own interest," he testified. (Affidavit of Curtis B. Gans, Cranston Exhibit 77).

Section (a)(1) of the Resolution fails to make clear that *all* the contacts I had with regulators during this time—and at all other times—were, standing alone, not only proper, as the Committee's Statement of February 27, 1991 acknowledges, but were also de minimis. The established fact is that they were all routine status inquiries, or requests that somebody see somebody, or requests that various proposed sales of Lincoln be carefully considered. The Committee fails to make clear that in *none* of the contacts I made did I ever advocate any particular action. It fails to make clear that I *never* urged the regulators to take or refrain from any particular action.

Thus the alleged improprieties that the Resolution suggests occurred arise solely because of routine, non-substantive inquiries I made on behalf of constituents that may have been in some way proximate in time to the solicitation or receipt of charitable or related donations.

I previously have noted in statements to the Committee that my actions in respect to Mr. Keating *should not be viewed as if they occurred in a vacuum.* I pointed out that my days and my nights are characterized by constant, passionate work on the great issues of our time, like war and peace, the environment and the economy, justice, and equal rights. I cited my many responsibilities during the time these events occurred, including my leadership role in the Senate as Majority Whip: my Chairmanship of the Veterans' Affairs Committee; my membership on several other committees and the Chairmanship of busy and important subcommittees; my very active role in fund-raising for other Senators and causes as well as for my campaigns; and the fact that—along with my Senate colleague from California—I represent many more constituents (30 million) than do any other Senators. Indeed, California's Senators *repressent more constituents* than any other legislator *has ever represented* in any country in the *entire history of legislative bodies.*

Constantly, I am called upon for help by my constituents. Unlike a corporation, I do not have the funds and the capacity to verify the financial status or the moral stature of each constituent who presents a problem to me. I cannot ask Dun and Bradstreet or the FBI to provide me with this information. More than 300,000 constituent requests have been handled by my staff and me in the 22 years I have been in the Senate. I deeply regret that one involving Lincoln savings has created the problem that is before us.

A casual observer of the hearings might well have obtained the false impression that I did little else over several years except deal with regulators regarding Lincoln. This is not the case. *In the almost two year period* between the April 1987 meetings and February 8, 1989, *I had only five contacts* with Federal regulators regarding Lincoln. I had no contacts at all between May 16, 1988, when Mr. Wall requested an appointment with me to discuss legislation, and February, 1989, when the sale of Lincoln came up.

In the period from February 8 through April 14, 1989, I had only five contacts with FHLBB members Wall, Martin and White regarding *three different proposals* to sell Lincoln. All contacts that I initiated were proper status inquiries. I had a legitimate basis for making them. All these contacts related to the interests of many thousands of my constituents whose jobs and financial well-being depended upon the fate of Lincoln.

I by no means responded favorably to every request by Messrs. Keating or Grogan for me to take some official action. I already have cited my refusal to push hard for the approval of a specific sale of Lincoln. Mr. Grogan in his testimony cited several examples of requests for actions that I declined to take. (JG, 12/12/90, p. 113; 12/13/90, pp. 130, 206–7, 215, 306; 12/15/90, pp. 90, 93–4, 96–8).

Besides citing many facts that contradict the causal connection theory concerning charitable donations and my official actions, I have presented a list of inaccuracies and important facts that were omitted in the Committee documents of February 27. In all fairness, these matters should be corrected in the final documents that are issued by the Committee.

A fair question to ask is: To what extent was the Committee influenced by these omissions of important facts, inaccuracies, and unwarranted implications in material put before it while reaching its conclusions announced on February 27, 1991?

I protest allegations of linkage, explicit or implicit, based merely on unsubstantiated and prejudicial inferences instead of demonstrable evidence.

I am convinced that a full and further review of the record, in light of my Submission, can only led to three conclusions:

First, there is no evidence of a causal connection between any solicitation of donation and any official action on my part.

Second, that my conduct was not materially different from that of the other four Senators involved.

Third, that whatever differences there were between that actions of the four Senators and mine they were not differences of *kind.* A fair and impartial consideration of this matter can only lead one to the conclusion that the Committee's treatment of my actions *should not differ in kind* from the treatment it accorded Senators DeConcini, Glenn, McCain and Riegle. I concede that I should have recognized that fund-raising—even for charitable donations—close in time to official actions could lead to an appearance of impropriety. It was a mistake not to have given more thought to appearances.

I concede that I should have constrained more closely the individual who was working for an organization that raised charitable contributions.

I readily concede these errors, but these were errors in judgment, not in intent.

I deeply regret them.

Without any clear and convincing evidence that any official action of mine was causally linked to any donation, however, there is no reason for the Committee to recommend institutional action in my case.

Institutional action would be a tragic event in my 22 year career in the Senate. Such action is not warranted by the events that have clouded the recent past.

I love this body and I have cherished each day I have spent in it serving the people of California.

APPENDIX I—CHARLES KEATING: HIS POLITICAL PHILOSOPHY AND HIS RECORD OF PHILANTHROPIC DONATIONS

The amounts in charitable donations I raised from Mr. Keating should not seem unusual when the Committee considers his general record of giving to and supporting philanthropic causes.

He gave between $1 million and $5 million to Mother Teresa. He donated $2 million and loaned $40 million to Covenant House in New York. He gave $1 million to the Vincent de Paul Society in Arizona. He gave untold millions to anti-pornography campaigns and other causes.

The amounts the other four Senators and I raised from Mr. Keating in political contributions also are not unusual when the Committee takes into account his general pattern of participation in the political process.

He regularly gave and raised thousands of dollars to political campaigns and candidates including $100,000 to George Bush's "Team 100" in 1988.

The Special Counsel asked several times why Mr. Keating, whom he has characterized as an extremely conservative Republican, would contribute to a Democrat such as I and to causes in which I believed.

The Special Counsel cited an invitation to a Democratic fund-raising dinner that I enclosed in a letter to Mr. Keating. (Sp. Coun. Ex. 29). The Special Counsel said he was bewildered at the notion that Mr. Keating would want to pay to go to a dinner sponsored by Pamela Harriman, the well known Democratic fund-raiser, and Governor Dukakis. The fact is that when my invitation arrived, Mr. Keating already had purchased a ticket to the event on his own. (JJ, 7/19/90, pp. 173–4).

Mr. Grogan testified as follows about Mr. Keating's philosophy: "Mr. Keating has a reputation that's not accurate of being a very conservative Republican. While he holds certain conservative Republican views, I would not characterize him as a conservative Republican and he doesn't characterize himself that way. He is much more liberal on a variety of domestic issues." (JG, 12/12/90, p. 88).

It is a matter of record that Mr. Keating has contributed to many Democrats and to many Republicans including Walter Mon-

dale's Presidential campaign, the Reagan-Bush campaigns, the Democratic Senatorial Campaign Committee, the Republican National Committee, the Democratic Party of California and the Republican Party of California. F.E.C. reports covering the elections of 1984, 1986, and 1988 show that he contributed to many Democratic and Republican candidates for the Senate and the House.

APPENDIX II—MY SUGGESTED CORRECTIONS TO SEVERAL ADDITIONAL FACTUAL ERRORS IN THE COMMITTEE'S FEBRUARY 27, 1991 STATEMENT AND RESOLUTION

The Committee Statement in the section headed "Recommendation for Bi-Partisan Campaign Reform" declares that over 80% of the funds raised by the five Senators "were not disclosed funds raised . . . under the Federal Election Campaign Act. Rather, such funds were undisclosed, unregulated funds raised for independent expenditures, political party 'soft money,' and a non-federal political action committee." That statement contains two factual assertions that I believe are in error and should be corrected in the Committee's final Report.

First, no funds were raised for "independent expenditures"—funds raised independently of a campaign to help a candidate without the candidate's consent. I did not raise any. I do not believe there is any evidence that any of the other Senators raised any.

Second, I presume the reference to "political party 'soft money'" refers to the donation to the California Democratic Party. That contribution was not "undisclosed" and "unregulated". It was both disclosed and regulated in full accordance with California law.

This section of the Statement also fails to mention the category of funds that comprised most of the funds I raised: charitable donations certified as tax-deductible by the I.R.S. because they were to 501(c)(3) non-partisan organizations. This omission also should be corrected.

I did not raise any funds for a non-federal political action committee. Thus, nothing in this section as written describes my solicitations of charitable donations and related charitable donations from Mr. Keating.

FOOTNOTES

[1] Legal fees I feel obliged to cope with total more than $878,000—over $628,000 for me, and over $250,000 for others involved because of my involvement. This total amount exceeds the aggregate sum of my Senate salary for the past 10 years.

[2] I regret that I have been unable to doublecheck to insure that detail in every citation and footnote contains no error. I am confident, however, that the substance of every reference to which I have referred is accurate.

[3] That is why I have voluntarily made my tax returns public for many years. That is why I established a blind trust during my first term in the Senate. That is why I stopped accepting honoraria.

[4] (AC Exhibit 51E).

[5] William Seidman subsequently said, referring to the Arthur Young and Alan Greenspan letters, "Those two documents, I think, were pretty extraordinary for Senators to receive in terms of convincing them of the possibility that the bureaucracy was out of control. The Senators had a couple pieces of paper that could have raised questions in their minds. You have to say this on behalf of the Senators: they got a letter from a Big 8 accounting firm, the likes of which I think had never been done before in history in which the firm on the stationery said the regulators are harassing the company, treating them unfairly, et cetera." (AC, 4/30/90, p. 105).

[6] Such status inquiry calls are certainly routine for most if not all Senators. (Senate Ethics Committee, 2/27/91, p. 3, para. 1).

[7] Back in the 70's, another large corporation, Lockheed, was facing bankruptcy. Lockheed had invested millions of dollars in my state. The livelihoods of many thousands of my constituents and their families were at risk—as was the case with Lincoln Savings. I devoted far more time and effort and made many more phone calls about Lockheed's plight than I ever did about Lincoln's as I successfully endeavored to obtain a government guaranteed loan for Lockheed.

Lockheed was not a contributor to my campaigns or causes. In fact, Lockheed had contributed to my opponent in the previous election.

[8] Again, such phone calls are certainly routine for all or most Senators. The Supreme Court has noted, "The making of appointments with government agencies is a 'legitimate errand' performed by Members of Congress for constituents." (*Brewster* 408 U.S. at 512). The Supreme Court has also judicially observed that Senators may be more aggressive than any of the five of us were in dealing with the Bank Board: "Senators are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may *cajole* and *exhort* with respect to the administration of a statute." (Gravel v. U.S., 408 U.S. 606, 626, 1972)

[9] It would not have been unusual for Mr. Keating to make an unsolicited donation. The record shows that in 1985, he made an unsolicited $200,000 political contribution to Senator Glenn's Political Action Committee.

[10] In December, 1990, the San Francisco Chronicle falsely accused me of trading favors for cash. When I threatened to sue the Chronicle for libel, the Chronicle published a complete Page One retraction.

[11] Ms. Jacobson's activities should be considered in the context of Senate Rule 41 that permits Senators to appoint up to three members of their staffs who may solicit and receive campaign and political contributions. Ninety-nine Senators had done so as of November, 1990. All 99 Senators appointed key staffers, including 90 Administrative Assistants, who could raise and receive contributions while simultaneously possessing the enormous power to schedule appointments; to draft, amend, advance or delay legislation; and to deal with the Executive Branch and regulatory agencies.

Thus, the Senate has ruled that there is no impropriety and no appearance of impropriety if a Senate staffer who raises funds also schedules and attends meetings where substantive matters are discussed with a constituent-contributor. It seems to me that if there is a question of appearances if a fund-raiser who is not on the Senate staff attends such meetings, there is at least an equal possibility of an appearance question when the roles are commingled.

[12] I must note a separate but relevant matter that was established during the hearings involving Bill White, who had formerly been Senator Glenn's Administrative Assistant. Mr. White subsequently left Senator Glenn's staff and proceeded to serve as Chairman and Treasurer of the John Glenn Committee, Inc. Mr. White received a letter dated June 6, 1984 from Mr. Grogan. The letter began as follows: "Dear Bill: Many thanks for arranging to meet with Bob Kielty regarding the JHG fundraiser in Phoenix. Also many thanks for coordinating with Dan Dougherty, etcetera, regarding the proposed FHLB regulation limiting direct investments by insured institutions." (Sp. Coun. Ex. 33); (Glenn, 1/4/91, pp. 225-6).

In this instance the Committee did not feel it necessary to be critical of Senator Glenn for the fact that his fund-raiser, who was not on his Senate staff, was coordinating in substantive areas.

[13] The testimony of my Banking Committee aide, Ms. Jordan, substantiates Ms. Jacobson's. The Special Counsel asked her if it was the general philosophy of my office that donors could rightfully expect some kind of resolution of the issues that they brought to her. She replied that it was the policy of our office to respond to all inquiries. There was no mechanism for keeping staffers informed of who were contributors, nor any effort to do so in any way. Ms. Jordan certainly made no inquiries about whether somebody was a contributor before she decided how to act on a particular request. Ms. Jordan testified, "It was basically our posture that we resolved everything as far as one way or another, either for or against."

The Special Counsel asked Ms. Jordan how she set priorities, how she decided which complaints got handled first and the depth. She responded, "I've never had that problem. I can't remember having a problem like that where I had to stop doing something for one person to do something for another." (CJ, 6/27/90, pp. 57-8).

[14] I have testified twice as to why I did not walk away from Lincoln's problems—and away from the problems of thousands of my California constituents—when I heard that the regulators attending the April 9 meeting had revealed that earlier on that very same day they had decided to make a criminal referral re Lincoln (without indicating that it was aimed personally at Mr. Keating). (AC, 4/30/90, pp. 180-2; 10/16/90, pp. 26-7). See also testimony of Ms. Rosemary Stewart indicating that there was no evidence of misconduct by high level management of Lincoln. (Rosemary Stewart, 1/2/91, pp. 43-7).

[15] See Appendix III for details on these points.

[16] In one case in 1873 when the Senate investigated whether Senators Harlan and Patterson had been bribed by an offer of Credit Mobilier stock at preferential rates, the Senate also considered whether Senator Harlan's conduct violated ethical standards because of a related campaign contribution. A special Senate committee apparently found that the contribution was made to influence Senator Harlan, but the Committee recommended no disciplinary action because the contribution did "not appear to have influenced his action as a Senator." (pp. 59-60, Senate Legal Counsel Memorandum to Select Committee on Ethics, March 1991).

[U.S. Senate Select Committee on Ethics]

MY WRITTEN RESPONSE TO THE ETHICS COMMITTEE'S NOVEMBER 20, 1991, RESOLUTION FOR COMMITTEE ACTION

(By Senator Alan Cranston, U.S. Senate, Washington, DC, November 20, 1991)

INTRODUCTION TO MY WRITTEN RESPONSE TO THE ETHICS COMMITTEE'S NOVEMBER 20, 1991 RESOLUTION FOR COMMITTEE ACTION (ECR)

The following constitutes my response to the details of the Resolution for Committee Action issued by the Select Committee on Ethics on November 20, 1991. There are several inaccuracies and inconsistencies that occur in this *Resolution (ECR)* that the Ethics Committee has issued.[1]

In my Written Submission of April 22, 1991, (ACS), I already had pointed out most of these inaccuracies and inconsistencies and had supplied the Ethics Committee with the relevant documented facts. Many of these facts are ignored in the Resolution. The following primarily draws upon my Written Submission (ASC) to critique the erroneous material which appears in the Resolution.

ECR 1) a) (ii)

ECR 1) *Contacts with Federal Officials Regarding Lincoln S & L*

a) That the Committee finds that Senator Alan Cranston, personally or through Senate staff, made the following contacts with federal officials regarding Lincoln Savings and Loan (Lincoln), a subsidiary of American Continental Corporation (ACC), a company associated with Mr. Charles H. Keating, Jr.:

(ii) On March 27, 1987, following a discussion with a Lincoln lobbyist, Senator Cranston's banking aide inserted material into the *Congressional Record* relating to "direct investments" by Savings and Loans, an issue of importance to Lincoln and many other Savings and Loan institutions;

This statement is a distortion of the fact regarding a *Congressional Record* statement about an amendment to the Competitive Banking Equality Act of 1987 proposed by Senator Proxmire in the manager's amendments at the last minute which would overrule all state laws on the subject of direct investment. Senator Cranston's banking aide, Carolyn Jordan testified that she discussed the matter with Senator Proxmire's staff person who said the amendment was redundant and that they were going to remove it from the bill. Jordan went to the Senate "record" room after the Senate recessed that night and saw Senator Proxmire's statement regarding the amendment, but was unsure whether the amendment had actually been

Footnotes at end of article.

removed. Jordan testified that, "we looked at this as a State's rights issue as opposed to a direct investment issue." Jordan testified she was concerned and brought this to the attention of Senator Cranston's A.A., Roy Greenaway. Jordan testified "I did not insert [the statement myself], but I wrote the statement. . . . I gave it to our A.A. [Roy Greenaway] and he had a special assistant to sign it, and they took it to the *Congressional Record* room and that is how it was inserted." (Jordan, 12/11/90, pp. 143–4). She further testified, "It [the statement's insertion] was not done by me personally. The A.A. [Roy Greenaway] and his special assistant signed off on it, because it had to have Alan Cranston's signature on it." (Jordan, 12/11/90, p. 146).

Roy Greenaway, Senator Cranston's A.A., stated that "I am authorized to approve for inclusion in the *Congressional Record* statements which have not been personally reviewed by Senator Cranston. . . . Although I have no specific recollection . . . of approving this particular statement, I have no reason that I did not. Ms. Jordan's description of my actions with respect to this particular *Congressional Record* statement is consistent with my practice and with the office policy described in paragraph 4. . . . I am confident that I would have approved the statement for inclusion in the *Congressional Record*. . . ." (Roy Greenaway Aff., 1/14/91).

There is conflicting testimony concerning the reason for the statement's inclusion. Jordan repeatedly referred to the amendment as overturning the authority of the State of California and stated she did not talk to Grogan or anybody else at Lincoln at that time although she testified that she was aware of Lincoln's position on the issue. (Jordan 12/11/90, pp. 145, 136).

Grogan, however, testified that one of his lobbyists discovered the amendment had been slipped into the bill at the last minute and talked to Jordan about getting that removed and putting in legislative history to neutralize Senator Proxmire's statements. (Grogan, 12/14/90, pp. 146–47). Grogan, however, when confronted with Jordan's testimony stating she had acted on her own said, "I have no information that in any way makes me think that that is not absolutely the truth." (Grogan, 12/14/90, p. 149). When closely questioned, Grogan testified that whatever happened between [the Lincoln lobbyist] and Carolyn Jordan, Grogan [he was not present] and that the lobbyist had simply told him that the mission was accomplished; that they were going to get language to neutralize the Proxmire language. (Grogan, 12/13/90, p. 241).

ECR 1) a) (iii)

(iii) On April 2, 1987, Senator Cranston attended a meeting with FHLBB Chairman Edwin J. Gray and Senators Dennis DeConcini, John Glenn, and John McCain to discuss the ongoing examination of Lincoln.

ECR 1) a) (iii) omits a description of my participation in the April 2, 1987 meeting with FHLBB Chairman Edwin J. Gray and Senators DeConcini, Glenn and McCain to discuss the ongoing examination of Lincoln.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 12–15 states:

"The evidence shows that I played a very minor but proper role in the April 2 meeting. I asked why the audit was taking so long and agreed with Senator Glenn that if Mr. Keating had broken any law he should be prosecuted, but if he hadn't the regulators should get off his back. (AC, 4/30/90, pp. 131, 133); (Gray, 11/27/90, p. 51). The evidence shows that my participation in the April 9 meeting was essentially limited to sticking my head in the door for a minute. (AC, 4/30/90, p. 150); (Sp. Coun. Ex. 193).

"3. *No Causal Connection:* The Committee's findings conclude that each of the five Senators had information that reasonably caused concern about the fairness of the Bank Board's examination of Lincoln and that was sufficient to justify contacting Bank Board personnel. (Committee Statement, 2/27/91, p. 1, para. 4). The Committee found that, without regard to donations or other benefits, no Senator violated any law or Senate rule by attending the April 2 and 9 meetings. (Committee Statement, 2/27/91, p. 1, para. 1).

"The evidence shows that in that point in time all five of us had good reason:

To view Mr. Keating as a highly successful and respected businessman. "All five of us also knew that:

Alan Greenspan, who is now the Chairman of the Federal Reserve, had stated in his opinion that Lincoln was solvent for the foreseeable future. (Sp. Coun. Ex. 159); (AC, 4/30/90, p. 101).

Arthur Young, one of the "Big Eight" accounting firms, had found Lincoln to be in good shape and was very critical of the regulators.[2] (Sp. Coun. Ex. 161); (AC, 4/30/90, pp. 99–100).

"I had several additional reasons to be concerned about the fairness of the Bank Board's examination of Lincoln:

Lincoln was a California-chartered Savings and Loan. Many thousands of its employees and depositors were my constituents. Their jobs and financial security were at risk.

I was aware—as perhaps the other Senators were not—that the Arthur Anderson firm, another of the "Big Eight" accountants, had found Lincoln to be in good shape and had grave questions about the performance of the regulators. (AC, 4/30/90, p. 102).

I previously had engaged in a confrontation with Mr. Gray, the Chairman of the Bank Board, and had the clear impression that he was incompetent. (AC, 4/30/90, pp. 106–9).

Mr. Gray had worked in public relations for a savings and loan institution in San Diego, California, before he was appointed to chair the Bank Board. I knew he had a poor reputation in the San Diego business community. (AC, 4/30/90, p. 107).

I knew that a principal newspaper in California, the Los Angeles Times, had called for Mr. Gray's resignation from the Bank Board after the General Accounting Office found he had misused $27,000 of public funds. (*Id.*; Cranston Ex. 57); (AC, 4/30/90, p. 92).

"Thus the *evidence is overwhelming* that (a) I had many sound and official reasons to participate in the April meetings, where I played a very minor and proper role, and (b) the donation was solicited and received weeks before I knew of the April meetings. The preponderance of the evidence shows that the donation was solicited and received before *anyone* even conceived of the meetings.

"There is no evidence—nor could there be—that I attended the April meetings because of the donation."

ECR 1) a) (v)

(v) In July or August of 1987, Senator Cranston called M. Danny Wall, then Chairman of the FHLBB, concerning Lincoln.

Clarification of this point is necessary. Wall did testify that I called him in July or August of 1987 regarding Lincoln. Wall testified, *however*, that I simply made "the observation that he understood that there was an examination that had been underway for in excess of a year, he understood that to be unusual—which it was; and that he urged the Board to make a decision, not in any way indicating what the Board's decision should be, but that we ought to make a decision and get on with it." (Wall, 12/4/90, 19–20). I do not have any independent recollection of this contact (Taylor Submission, 1/30/91, p. 15).

ECR 1) a) (vi)

(vi) On Nov. 12, 1987, Senator Cranston called Chairman Wall and discussed Lincolns' dispute with the San Francisco FHLB regulators.

The word, "discussed", is a distortion of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 16–17*, states:

"2. *Official Action:* My notes about the call to Mr. Wall establish that it was a status inquiry.[3] I asked if the end of the audit of Lincoln was in sight. Mr. Wall and I also discussed the personality problems between Lincoln and the San Francisco regulators. (Sp. Coun. Ex. 147). Mr. Wall's testimony confirmed this. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.). Mr. Wall also testified that I did not urge him to take any particular course of action. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.).

"Furthermore, there is *no* evidence that I attempted to influence the regulatory actions of Mr. Wall *or any other* regulator at any time. Every regulator who was called as a witness or in an affidavit testified that none of his or her actions were influenced by any action from office or from me. (Wall Affidavit, Sp. Coun. Ex. 428, p. 6, para. 9); (Rosemary Stewart, 1/2/91, pp. 10–11, 196); (Wall, 12/4/90, pp. 104, 116, 181–2, 184, 191); (Martin, 12/3/90, p. 58; Martin Affidavit, Sp. Coun. Ex. 17, para. 11); (Gray, 11/27/90, p. 97); (Patriarca, 11/27/90, p. 147); (Black, 12/6/90, pp. 29–30); (Cranston Ex. 78, Dochow Aff. Attachments A–1 at 19–20 & A–2 at 41).

"3. *No Causal Connection:* It flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for anyone to donate or contribute *anything* to me in order to get me to do *anything*.[4]"

ECR 1) a) (vii)

(vii) On Jan. 20, 1988, Senator Cranston called Chairman Wall and asked him to meet with Charles Keating.

This is a distortion of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 22 states:*

"I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be ncessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

"3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California busi-

ness in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4).[5]"

ECR 1) a) (viii)

(viii) On February 16, 1988, Senator Cranston called Chairman Wall and his notes indicate discussion of Lincoln.

There is evidence to the *contrary* regarding the subject of the call. My handwritten notes indicates a call to Wall on that date. (Cranston Ex. 173). However, in my deposition on April 30, 1990 (pp. 230–31), I replied to Special Counsel Bennett's questions regarding my notes of the 2/16/88 phone call: "I do not believe this call had anything to do with Lincoln or Keating in any way. I'm not positive of that but that is my impression from the notes."

Furthermore, there is no further reference to this call in Wall's affidavit or testimony before the Committee.

ECR 1)a)(ix)

(ix) On April 21, 1988, Senator Cranston called Chairman Wall to obtain a status report on Lincoln;

This is a *distortion* of the facts. Senator Cranston Exhibit 179 consists of my handwritten notes apparently of a phone call made on April 21, 1988 to Wall. Lincoln Savings appears to be one of several matters discussed (item 3). In my deposition on April 30, 1990 (p. 251–4), I translated the notes as follows: "April 21. I had a conversation with Wall on several matters. The notes indicate that it covered four points, only two of which related to Keating." I went on to describe the other items which involved two other institutions unrelated to Lincoln. Item three related to Lincoln and I testified that he presumed he asked Wall what was happening and Wall responded he was trying to resolve it and nothing more was said or I would have made a note. The last item related to a general FSLIC issue (recapitalization etc.) and the notes reflect that Wall had indicated that he had all views on the issue, including Keating's.

ECR 1) a) (x)

(x) On May 6, 1988, after receiving a telephone call from James Grogan, an ACC attorney, Senator Cranston's banking aide talked to FHLBB officials about the FHLBB's proposed supervisory agreement with Lincoln;

The statement is misleading and does not contain all the relevant facts. Cranston Ex. 150 is a memo from Ms. Jordan to me and Roy Greenaway, my A.A., dated May 6, 1988. It states that Ms. Jordan had received a call from Jim Grogan. Grogan told Ms. Jordan that the Board had met and decided to take enforcement action against Lincoln, including a supervisory agreement that triggered required reports to shareholders and the public, which would have an adverse effect on value of stock, etc.

Ms. Jordan's memo goes on to say that she called FHLBB and talked to Jim Boland, a special assistant to Wall and Carl Hoyle, Congressional Affairs, in a 3-way call. The memo indicates Ms. Jordan told them I was very concerned about using the supervisory approach. It describes the situation and discusses upcoming hearings in the Banking Committee on oversight of FSLIC and suggests that this issue could be raised at that time.

I stated that until I received Ms. Jordan's memo I was unaware that Grogan had called her or that Ms. Jordan had called Hoyle and told him that I was concerned about any action they proposed to take. My affidavit further states that I took no action as a result of the memorandum. (Cranston Ex. 82, p. 5). In my deposition, I said I did not recall authorizing Ms. Jordan to make these statements, but that it was consistent with my general views of the situation. (AC, 4/30/90, pp. 256–60).

ECR 1) a) (xi)

(xi) On May 16, 1988, Senator Cranston met with Chairman Wall, and Lincoln was discussed.

This point *distorts* the facts. The "discussion" was in reality a very limited status inquiry.

Initially, I did not recall discussing Lincoln at that meeting. However, after Wall testified that I had asked him when a decision would be made regarding Lincoln, I stated in my January 12, 1991 affidavit that "I recall very little about my meeting with Chairman Wall on May 16, but I believe he is correct in his testimony that when I saw him that month, we talked about a number of matters, and I inquired as to the status of the Lincoln matter. I did not complain about the Board's decision. I did not urge that the Board change or modify its decisions. I did not discuss with Mr. Wall any on going negotiations between the Bank Board and Lincoln." (Cranston Ex. 82, p. 6.).

Wall supported this statement in both his affidavit and testimony. In his affidavit, he stated, "To the best of my recollection, Senator Cranston asked when a decision would be made by the Board regarding Lincoln. The Senator did not suggest a course of action that he thought the Board should take. He repeated that he understood the examination of Lincoln was still pending and he urged that it be concluded." (Wall Aff., p. 13; 12/4/90, p. 56).

ECR 1) a) (xii)

(xii) On February 8 and 9, 1989, Senator Cranston called Chairman Wall and Federal Deposit Insurance Corporation Chairman L. William Seidman concerning the proposed sale of Lincoln and, on February 8, Senator Cranston's banking aide called an FHLBB official about Lincoln;

This statement is a *distortion* of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 27–8* states:

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

"3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured constituents of mine."

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents."

Furthermore, the report fails to clarify the nature of my banking aide's inquiry. Taylor's Post-Hearing Submission of January 30, 1991, (page 16, fn. 11) describes the call as follows: "Ms. Jordan called Mr. Dochow on February 8 to inquire about whether there was a pending application to buy Lincoln. (Cranston Ex. 78, Dochow Aff. 6). It was on this occasion that Ms. Jordan first learned that there was a dispute about whether Lincoln satisfied its net worth requirements (Jordan, 12/11/90, p. 107). Mr. Dochow testified that Ms. Jordan did not urge that the Bank Board take any particular action with respect to the sale and that he viewed Ms. Jordan's call as a proper status inquiry. (Cranston Exhibit 78 (Dochow Aff. 6)."

ECR 1) a) (xiii)

(xiii) In early April 1989, Senator Cranston called all three members of the FHLBB concerning the proposed sale of Lincoln.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 26–28 states:

"2. *Official Action:* I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of my sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

"3. *No. Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine.

"For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

"Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a casual connection between a solicitation and an official action."

ECR 1) c)

ECR 1) *Contacts with Federal Officials Regarding Lincoln S & L*

c) The Committee further finds that, when considered in and of themselves and without regard to any contribution or other benefit, none of Senator Cranston's aforementioned activities concerning Lincoln were illegal or improper and violated no law or Senate rule.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 52 states:

"The Resolution fails to make clear that *all* the contacts I had with regulators during this time—and at all other times—were, standing alone, not only proper, as the Committee's Statement of February 27, 1991 acknowledges, but were also de minimis. The established fact is that they were all routine status inquiries, or requests that somebody see somebody, or requests that various proposed sales of Lincoln be carefully considered. The Committee fails to make clear that in *none* of the contacts I made did I ever advocate any particular action. It fails to make clear that I *never* urged the regulators to take or refrain from any particular action.

"Thus the alleged improprieties that the Resolution suggests occurred arise solely because of routine, non-substantive inquiries I made on behalf of constituents that may have been in some way proximate in time to the solicitation or receipt of charitable or related donations."

ECR 2) a) (i)

ECR 2) *Solicitations and Contributions*

a) The Committee finds that, prior to 1987:

(i) Mr. Keating, his associates, and friends contributed a total of $49,000 to Senator Cranston's 1984 Presidential Campaign and his 1986 Senatorial Campaign;

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 40 states:

"Clearly all five Senators had varying degrees of involvement in respect to Lincoln. Mr. Keating and his friends and associates contributed more political contributions to the campaigns and P.A.C.s of each of the other four Senators, who had direct control over these funds, than to mine. The totals:

Glenn	$252,200
McCain	110,000
DeConcini	85,000
Riegle	78,250
Cranston	49,000"

ECR 2) a) (ii)

ECR 2) *Solicitations and Contributions*

a) The Committee finds that, prior to 1987:

(ii) At Senator Cranston's request, Mr. Keating also caused a contribution of $85,000 to be made by ACC to the California Democratic Party get-out-the-vote campaign in the Fall of 1986.

The resolution omits to mention the bipartisan nature of Mr. Keating's donation. I state in my deposition, "Keating did contribute $85,000 to a partisan get-out-the-vote drive conducted in 1986 in California when I was running . . . I would like to point out he also gave $80,000 to the Republican party, for a get-out-the-vote drive which was harmful to me, so that was sort of a net wash." (AC, 4/30/90, p. 40).

ECR 2) a) (iii)

(iii) At the request of Senator Cranston's chief fund raiser, Lincoln also made a $300,000 line of credit available to Senator Cranston's campaign in the fall of 1986 on an expedited basis, although this line of credit was never used.

Senator Cranston's Letter to Senator Heflin, September 12, 1991, Re Response to Bennett/Helms leak, pp. 13–14 states:

"Loans or lines of credit are often taken out on an expedited basis in the closing, crisis moments of campaigns when fears develop that there will be a fatal, last-minute shortage of the cash needed for victory.

"There was no benefit to my campaign, since the line of credit was not used.

"There was *never* any intention that this line of credit was to be for my personal use or benefit, and there is *no* evidence indicating any such intention. At the time, I was totally engaged in the closing stage of a very close election, and obviously had no time or inclination to deal with my personal finances. The Finance Director for my campaign arranged the loan. She testified that the loan was solicited by her to enable the campaign to pay for last-minute media buys, if needed, and that use of funds was to be solely upon her discretion and authority. (Jacobson, deposition H, P. 87-95. Also B.H., P. 214, footnote 850). Mr. Grogan confirmed in his testimony that Ms. Jacobson solicited the loan, that he understood it to be personal to me, but that he did not know whether ultimately that was the case. (J.G., 12/14/90, p. 138–9 & Grogan, Dep. S1, p. 134–135; Also, B.H., p. 214, footnote 850). If there was ever any discussion of making the line of credit to me personally, I was not aware of it, and that would only have been discussed because those willing to consider making loans to be used for campaign purposes prefer to make them to individuals, not to incorporated campaigns where future repayments are likely to be far more difficult to obtain. In any event, the line of credit was set up to my campaign on an arms-length, purely business-like basis, and I was *required* to make my personal property available as surety."

ECR 2) b)

b) The Committee also finds that, beginning in 1987, Senator Cranston solicited contributions from Mr. Keating for several voter registration organizations with which Senator Cranston was affiliated:

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 51 states:

"The Resolution easily could give the erroneous impression to anyone not familiar with the facts that the donations referred to were all of a political nature to some campaign or P.A.C. of mine. It omits any reference to the established and undisputed fact that 85.3% of the money—totaling $725,000—that Mr. Keating donated from early 1987 through April, 1989 was in the form of I.R.S. approved 501(c)(3) tax-deductible charitable donations to organizations that were not under my control and whose use of the money was not under my control. Furthermore, I held no position in any of these organizations, nor did I serve on any of their boards.

"In addition, Mr. Keating donated $125,000 to America Votes, an organization that raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

"The Resolution fails to point that *none* of Mr. Keating's donations which are being questioned during this period was in the form of a political contribution to any campaign of mine. Only $10,000 was to a federal P.A.C. that I organized."

ECR 2) b) (ii)

(ii) the Senator solicited $250,000 for voter registration groups on September 24, 1987, and Keating affiliated companies contributed $225,000 to the Forum Institute (a 501(c)(3) tax-exempt organization) and $25,000 to USA Votes on November 6, 1987;

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 16 & 17 states:

"1. *Donation:* . . . The Resolution fails to make clear that these were *not* political contributions to any campaign of mine or to my P.A.C. I received no direct political benefits from the donations.

"$225,000 was in the form of a charitable donation to Forum Institute, an I.R.S. approved 501(c)(3) tax-deductible organization. Forum distributed funds to non-partisan, 501(c)(3), grass roots organizations that registered voters in approximately 20 states. (Sp. Coun. Ex. 145). I accepted the check on behalf of Forum and turned it over to Forum. I had no control over Forum or how the money was used. The independent officers and directors of Forum had that control. (Harmon Affidavit, Sp. Coun. Ex. 501, para. 13).

"$25,000 was in the form of a contribution to USAVotes (formerly America Votes) to support its efforts to raise charitable donations for I.R.S. approved 501(c)(3) non-partisan registration groups. (Sp. Coun. Ex. 146).

"The Resolution also fails to mention that the donations were agreed to before October 6, 1987 (Sp. Coun. Ex. 182), more than a month prior to my status inquiry call to Mr. Wall."

ECR 2) b) (iii)

(iii) the Senator discussed the Center for Participation in Democracy (a 501(c)(3) tax-exempt organization) with Mr. Keating on January 8, 1988, and ACC donated $400,000 to the Center for Participation in Democracy and $100,000 to the Forum Institute on February 10, 1988;

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 19–23 states:

"1. *Donation:* The Resolution incorrectly insinuates that (a) in January, 1988, Mr. Keating offered to make an additional charitable donation in connection with his asking me to set up a meeting for him to meet with Mr. Wall; and (b) based on my setting up the meeting, Mr. Keating made charitable donations in February. The Resolution's insinuation is unfair and inaccurate and cannot be substantiated in any way.

"There is *no* clear and convincing evidence that Mr. Keating offered to make an additional donation in January, 1988.

"Mr. Keating did make two charitable donations to voter registration groups on February 10, 1988 in Phoenix. The Resolution omits the fact that these were *two* I.R.S. approved charitable, tax-deductible donations to 501(c)(3) organizations for non-partisan, voter participation efforts. One was to Forum Institute, an organization I've already described. The other was to The Center for Participation in Democracy, that engaged in and supported non-partisan registration drives in several states. *Neither* of these two organizations, nor the use of the money, was under my control.

"Regarding this period, there is considerable testimony about a dinner I attended in January with Messrs. Keating, Grogan, and others. Mr. Grogan testified that he recalls no discussion of fund-raising at the dinner. (JG, 12/14/90, p. 166; 12/13/90, p. 24 & p. 265). My son, Kim Cranston, who was present, testi-

fied that he recalls no specific offer of support by Mr. Keating (KC, 6/28/90, p. 15). I testified similarly that (a) I did not solicit any funds at the dinner, (b) that I did not recall the discussion of any specific funds, and (c) Mr. Keating may have indicated in a *vague* way that he would continue to support registration efforts. (AC, 4/30/90, p. 191; 10/16/90, p. 87).

"Mr. Grogan testified that he was not aware of any solicitation that preceded my February 10 visit to Phoenix. (JG, 12/13/90, pp. 261–2).

"My visit to Phoenix had been in the works since at least September of the previous year. (JJ, 12/3/90, pp. 164–6). Messrs. Keating and Grogan had a long standing policy of inviting members of Congress, their staffs, and others to visit Phoenix to see the Lincoln/American Continental Corporation operation first hand. Many Congressmen and staff members have visited his company in Phoenix. Mr. Grogan testified that he had invited me to visit Phoenix several times. (JG, 12/14/90, pp. 169–70; 12/15/90, pp. 119–20). I had wanted to visit to see for myself the type of operation Mr. Keating was running. (AC, 4/30/90, p. 184). This was the first time that my schedule permitted this trip. (JJ, 7/19/90, p. 167); (JG, 12/13/90, p. 17). Ergo, this trip *was totally coincidental* to the Wall/Keating meeting. It *had no connection* with the Wall/Keating meeting.

"It is also equally coincidental that this trip finally occurred at the beginning of a new year, and thus coincided with the timing implicit to Ms. Jacobson's practice of seeking contributions from individuals twice in a given year—early and late. (JJ. 12/2/90, p. 161). Ms. Jacobson, in her capacity as a part-time USAVotes employee, had written me a memo dated February 4, 1988, stating that the main goal concerning Mr. Keating was to receive a charitable donation as soon as possible so that he could be asked for an additional donation in the fall. (Sp. Coun. Ex. 269). She testified that the timing of solicitations of donations was largely driven by her own timetable and that charitable giving is based on an annual cycle. (JJ, 12/3/90, pp. 176, 219).

"By happenstance, this trip to Phoenix was also consistent with my practice of going to visit potential donors—rather than inviting them to visit me—to get help for the registration efforts. (AC, 10/16/90, p. 87); (JJ, 12/3/90, p. 143).

"2. *Official Action:* There is *no evidence* that Mr. Keating committed to make a specific donation in connection with asking me to set up an appointment with Chairman Wall to see him.

"The evidence shows only that Ms. Jacobson sent me a memo dated January 18, 1988 relaying a request to her from Mr. Grogan that I help schedule a meeting between Messrs. Keating and Wall. (Sp. Coun. Ex. 172).

"I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I even knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

"3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2/27/91, p. 1, para. 4).[6]

"There is no evidence of a causal connection between my January 20, 1988 telephone call and the charitable donations. There is no specific evidence that there was even a solicitation of Mr. Keating or a discussion of any donation prior to the February 10, 1988 trip.[7] In fact, for six months there had been efforts to schedule a trip to Phoenix that finally occurred in February, 1988 and resulted in the receipt of charitable donations. *It is pure coincidence* that the trip finally was scheduled and the donations were received three weeks after my telephone call to Mr. Wall.

"Coincidence in time and unsubstantiated inferences about proper inquiries such as my telephone call and receipt of charitable donations on a trip that had been in the making for many months cannot properly substitute for the lack of clear and convincing evidence of improper linkage, particularly where there is a factual and convincing evidence that Mr. Keating *did not* ask me to set up a meeting in connection with a solicitation of a donation of any type."

ECR 2) B) (iv)

(iv) in early 1989, the Senator or his chief fund raiser discussed an additional voter registration contribution with either Keating or ACC attorney, James Grogan, but no further contributions were made to voter registration organizations.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 24–30 states:

"1. *Donation:* The Resolution fails once again to point out that this was a solicitation of an I.R.S. approved 501(c)(3) charitable tax-deductable donation, the use of which I did not control. It was *not* a solicitation of political contributions for my benefit. The Resolution accurately states that this donation was never made.

"The Resolution's description of [his chief fund raiser], Ms. Jacobson is misleading. In early 1987, she directed the fund-raising staff of the Democratic Senatorial Campaign Committee. At the time in question, early 1989 (and for more than a year before that) she was spending 50% of her time as a consultant to the Democratic Senatorial Campaign Committee; 25% as a consultant to a P.A.C. I founded (Committee for a Democratic Consensus); and 25% as a consultant under contract to USAVotes to raise charitable donations for registration efforts.

"Mr. Rob Stein, the Executive Director of USAVotes, was in charge of its over-all operations. I was one of three co-chairmen of USAVotes. I was not the direct supervisor of Ms. Jacobson in her capacity as a part-time employee of USAVotes, nor was I the direct supervisor of any other USAVotes employees.

"There is conflicting testimony concerning who solicited Lincoln at this time. I have testified that I do not recall discussing a donation with Messrs. Keating, Grogan or anybody during this period. (AC, 10/16/90, p. 68; 5/17/90, p. 299). I do not believe such a discussion ever took place. Mr. Grogan, when asked whether anybody on my staff or I solicited a donation from him or Mr. Keating during this period, testified that Ms. Jacobson, not I, discussed a donation with him. (JG, 12/14/90, pp. 179–80). Ms. Jacobson's recollection was that I solicited Mr. Keating during the period. (JJ, 12/3/90, pp. 167–8).

"I believe the following shows that Ms. Jacobson initiated the solicitation and that she did so without my knowledge.

"A memorandum from Joy Jacobson to me and to Rob Stein, the Executive Director of USAVotes, dated March 1, 1989, written on her home computer, shows that I did not make the solicitation and illustrates the mechanics of how the staff of USAVotes and I worked to solicit charitable donations. (Sp. Coun. Ex. 171). It was Ms. Jacobson's job to come up with the names of people, foundations and organizations which she thought would be potential donors. She would write a memorandum with the potential donors' names, suggestions as to who should contact them, and the amounts to be requested. When I reviewed it, I would look down the list for the names suggested for me. I would systematically try to call most, but not necessarily all, of the names suggested to me. When my part of the list was complete. I would hand it back with my notes about the calls to my secretary. She would report these results back to Ms. Jacobson.

"There are 18 names of potential donors of the March 1, 1989 memo. My handwritten notes or my secretary's notes appear under 12 of those names—only those that were proposed as my assignments.

"It is clear that Ms. Jacobson assigned herself three names on the first page: AFSCME, Dick Darling, and Charlie Keating. After Mr. Keating's name these words are typed in the memo: 'Joy is talking with Jim Grogan, 100,000 whenever it's needed.'

"This evidence corroborates Mr. Grogan's testimony that Ms. Jacobson, not I, made this solicitation. It indicates that her memory was incorrect when she testified that I solicited Mr. Keating. It shows that on the date of the memo, March 1, 1989, she had already discussed a $100,000 donation with Mr. Grogan.

"Ms. Jacobson's solicitation of Mr. Grogan is consistent with her explanation in her testimony 'that the first group you go back to [at the beginning of each year is] your past donors and try to renew them.' (JJ, 12/3/90, p. 161). Her solicitation of Mr. Grogan on her own is further evidenced by Ms. Jacobson's statement that 'the timing of the fundraising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.' (JJ, 12/3/90, p. 176). She also stated that I never suggested to her to time any request for a donation to coincide with anything before the Bank Board or with any other event or events. (JJ, 12/3/90, pp. 175–6).

"2. *Official Action:* The record shows that, working on an entirely different track from Ms. Jacobson, I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h,

12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp. 327–8); (Wall, 12/4/90, p. 91).

"3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have financially injured countless constituents of mine.

"For whatever reason, none of the sales materialized. However, the concerrns that motivated my calls did occur. The consequences have been catastrophic: a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

"In response to the inference I point to the clear and convincing evidence that (a) I did not solicit a charitable donation, and that (b) I did not know that Ms. Jacobson had made a solicitation until I read her memo of *March 1, 1989*. Once I knew, the knowledge had no effect on my conduct.

"Ms. Jacobson testified that she was not aware that Messrs. Keating or Grogan was talking to me about the sale, nor that I was being asked to do anything about it. (JJ, 7/19/90, p. 179).

"*There is absolutely no evidence* of any causal connection between (a) Ms. Jacobson's solicitation, and (b) my telephone calls in 1989 to regulators regarding possible sales of Lincoln. Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action.

"The *fair inference* from the record is that Ms. Jacobson was on one track following up according to her standard practice with one of the few established contributors whom she solicited personally and regularly at the beginning of each year. Meanwhile, I was on another track taking very limited official actions contacting regulators regarding the possible sale of Lincoln—actions for which there was clear and independent constituent related justification. Senator DeConcini made the same type of inquiries for similar reasons.

"I remind the Committee again of Mr. Grogan's response when my attorney asked him the following question: 'Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keating's support of the non-profit voter registration effort?' Mr. Grogan replied, 'Never.' (JG, 12/15/90, p. 132).

"The Special Counsel has cited no evidence that Mr. Keating authorized donations only on condition that I would help him, or because I had helped him. He cited no evidence that I agreed to help only if Mr. Keating contributed.[8]"

ECR 3)

ECR 3) *Linkage between Official Actions and Contributions*

The Committee finds that, in and of themselves, none of the foregoing actions of Senator Cranston violated any law or Senate Rule. The Committee further finds by clear and convincing evidence that, based upon the totality of the circumstances, Senator Cranston engaged in an impermissible pattern of conduct in which fund raising and official activities were substantially linked in connection with Mr. Keating and Lincoln.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 3 & 4 states:

"I will show that there is *no direct evidence* of any such causal link. I will cite clear and convincing evidence that there were other causes—very legitimate causes—for my official actions.

"The Resolution *infers* a causal connection from the proximity in time between the charitable donations and the official actions. Proximity in time is *not* clear and convincing evidence that the charitable donations caused my official actions. The Resolution's *inference* of a causal connection cannot survive dispassionate, reasoned analysis. It cannot be a substitute for clear and convincing evidence. The inference is particularly inappropriate and unfair given that my conduct was *not different in kind*, as I will show, from that of other Senators who have been under inquiry. The Resolution did not draw such adverse inferences against them.

"In retrospect, I can see that the proximity in time between the charitable donations and the official actions could lead to an appearance of impropriety where no impropriety existed. I wish I had foreseen this development—I have always endeavored to avoid appearances or actions that could reflect adversely upon the Senate or myself.[9]

"I acknowledge and I accept the consequences of an appearance of impropriety due to proximity of time.

"However, since timing and appearances did not warrant institutional action in the cases of the other Senators, it should not in my case.

"The Senate has never set standards *of any kind* governing the timing of contributions of any kind in relationship to legitimate constituent services. I fully recognize that if a Senator engages in conduct that is inimical to generally accepted and understood standards and values, the Senate has an obligation to find that Senator guilty of improper behavior, although his conduct does not violate a specific law or Senate Rule. There is no evidence that I engaged in any improper conduct.

"Without clear and convincing evidence of actual impropriety, there is no justification for subjecting me to disciplinary action. There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate has *never* determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful donation to the Senator's campaign or to a charity the Senator supports. To do so now would be contrary to the principles of the Senate and a violation of traditional concepts of fair play by proceeding in an *ex post facto* fashion.

"In every case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. Neither any member of my family nor I received any compensation or personally benefitted in any way from these charitable contributions. I had no financial interest in Lincoln Savings, its parent, or affiliates. I received no income from it."

ECR 3) a) (i)

ECR 3) *Linkage between Official Actions and Contributions*

The Committee finds that, in and of themselves, none of the foregoing actions of Senator Cranston violated any law or Senate Rule. The Committee further finds by clear and convincing evidence that, based upon the totality of the circumstances, Senator Cranston engaged in an impermissible pattern of conduct in which fund raising and official activities were substantially linked in connection with Mr. Keating and Lincoln.

a) From early 1987 through April 1989, Senator Cranston personally or through Senate staff contacted the FHLBB on behalf of Lincoln during a period when he was soliciting and accepting substantial contributions from Mr. Keating or his affiliates, to wit:

(i) As a result of a solicitation from Senator Cranston in early 1987, Mr. Keating contributed $100,000 to America Votes on March 3, 1987 near the time when Senator Cranston participated in the April 2 and April 9, 1987 meetings with FHLBB Chairman Edwin J. Gray and the San Francisco regulators.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 11–15 states:

"1. *Donation:* The Resolution accurately notes that a donation was made on March 3, 1987, to America Votes, (Sp. Coun. Ex. 159). America Votes (later known as USAVotes) raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, non-partisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

"2. *Official Action:* The Resolution is inaccurate and very misleading in stating that this donation was made during the period leading to my participation in the April 2 and April 9 meetings.

"The evidence is undisputed that the donation was discussed, solicited and committed on or before *February 24, 1987*. (Stein Affidavit, Sp. Coun. Ex., 458, para. 14); (AC, 4/30/90, p. 119). The donation check was dated *March 3, 1987*. (Sp. Coun. Ex. 159). The evidence shows that I knew nothing about the proposed meetings before the *second half of March*, and perhaps not until the *last week* in March. (JG, 12/15/90, p. 88); (AC 4/30/90, p. 119). Furthermore, the preponderance of evidence shows that the meetings first were conceived *after* the donation was solicited and received. (Gray, 2/23/90, p. 15; 11/29/90, p. 64); (Grogan 12/12/90, pp. 56–58, 208); (Riegle, 1/7/91, pp. 29–32, 46–9, 51–55, 101–2, 163); (DeConcini, 1/9/91, pp. 45–6, 49, 51–2, 60–63, 199–200, 203, 209); (McCain, 1/4/91, pp. 27–21, 26, 111, 163–4); (Glenn, 1/4/91, pp. 240–47, 193).

"The evidence shows that the April 2 meeting date was not set until a few days prior to the event. (Gray, 2/23/90, p. 15). The evidence shows that the second meeting on April 9 grew out of the April 2 meeting. The evidence shows that I played a very minor but proper role in the April 2 meeting. I asked why the audit was taking so long and agreed with Senator Glenn that if Mr. Keating had

broken any law he should be prosecuted, but if he hadn't the regulators should get off his back. (AC, 4/30/90, pp. 131, 133); (Gray, 11/27/90. p. 51). The evidence shows that my participation in the April 9 meeting was essentially limited to sticking my head in the door for a minute. (AC, 4/30/90, p. 150); (Sp. Coun. Ex. 193).

"3. *No Causal Connection:* The Committee's findings conclude that each of the five Senators had information that reasonably caused concern about the fairness of the Bank Board's examination of Lincoln and that was sufficient to justify contacting Bank Board personnel. (Committee Statement, 2/27/91, p. 1, para. 4). The Committee found that, without regard to donations or other benefits, no Senator violated any law or Senate rule by attending the April 2 and 9 meetings. (Committee Statement, 2/27/91, p. 1, para. 1).

"The evidence shows that in that point in time all five of us had good reason:

To view Mr. Keating as a highly successful and respected businessman.

"All five of us also knew that:

Alan Greenspan, who is now the Chairman of the Federal Reserve, had stated in his opinion that Lincoln was solvent for the foreseeable future. (Sp. Coun. Ex. 159); (AC, 4/30/90, p. 101).

Arthur Young, one of the "Big Eight" accounting firms, had found Lincoln to be in good shape and was very critical of the regulators.[10] (Sp. Coun. Ex. 161); (AC, 4/30/90, pp. 99–100).

"I had several additional reasons to be concerned about the fairness of the Bank Board's examination of Lincoln:

Lincoln was a California-chartered Savings and Loan. Many thousands of its employees and depositors were my constituents. Their jobs and financial security were at risk.

I was aware—as perhaps the other Senators were not—that the Arthur Anderson firm, another of the "Big Eight" accountants, had found Lincoln to be in good shape and had grave questions about the performance of the regulators. (AC, 4/30/90, p. 102).

I previously had engaged in a confrontation with Mr. Gray, the Chairman of the Bank Board, and had the clear impression that he was incompetent. (AC, 4/30/90, pp. 106–9).

Mr. Gray had worked in public relations for a savings and loan institution in San Diego, California, before he was appointed to chair the Bank Board. I knew he had a poor reputation in the San Diego business community. (AC, 4/30/90, p. 107).

I knew that a principal newspaper in California, the Los Angeles Times, had called for Mr. Gray's resignation from the Bank Board after the General Accounting office found he had misused $27,000 of public funds. (*Id.*; Cranston Ex. 57); (AC, 4/30/90, p. 92).

"Thus the *evidence is overwhelming* that (a) I had many sound and official reasons to participate in the April meetings, where I played a very minor and proper role, and (b) the donation was solicited and received weeks before I knew of the April meetings. The preponderance of the evidence shows that the donation was solicited and received before *anyone* even conceived of the meetings.

"There is no evidence—nor could there be—that I attended the April meetings because of the donation."

ECR 3) a) (ii)

(ii) Before October 6, 1987, Senator Cranston solicited and received a commitment from Mr. Keating for contributions in the amount of $250,000 for two voter registration groups, which were delivered to the Senator personally by Mr. Keating's employee James Grogan on November 6, 1987. When the contributions were delivered, Mr. Grogan and Senator Cranston called Mr. Keating, who asked if the Senator would contact new FHLBB Chairman M. Danny Wall about Lincoln. Senator Cranston agreed to do so, and made the call six days later.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 16–19 states:

"1. *Donation:* The Resolution omits any description of the donations, and fails to make clear that these were *not* political contributions to any campaign of mine or to my P.A.C. I received no direct political benefits from the donations.

"$225,000 was in the form of a charitable donation to Forum Institute, an I.R.S. approved 501(c)(3) tax-deductible organization. Forum distributed funds to non-partisan, 501(c)(3), grass roots organizations that registered voters in approximately 20 states. (Sp. Coun. Ex. 145). I accepted the check on behalf of Forum and turned it over to Forum. I had no control over Forum or how the money was used. The independent officers and directors of Forum had that control. (Harmon Aff., Sp. Coun. Ex. 501, para. 13).

"$25,000 was in the form of a contribution to USAVotes (formerly American Votes) to support its efforts to raise charitable donations for I.R.S. approved 501(c)(3) non-partisan registration groups. (Sp. Coun. Ex. 146).

"The Resolution also fails to mention that the donations were agreed to before October 6, 1987 (Sp. Coun. Ex. 182), more than a month prior to my status inquiry call to Mr. Wall.

"2. *Official Action:* My notes about the call to Mr. Wall establish that it was a status inquiry.[11] I asked if the end of the audit of Lincoln was in sight. Mr. Wall and I also discussed the personality problems between Lincoln and the San Francisco regulators. (Sp. Coun. Ex. 147). Mr. Wall's testimony confirmed this. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.). Mr. Wall also testified that I did not urge him to take any particular course of action. (Wall Affidavit, Sp. Coun. Ex. 428, p. 12, para. 10 h.).

"Furthermore, there is *no* evidence that I attempted to influence the regulatory actions of Mr. Wall *or any other* regulator at any time. Every regulator who was called as a witness or in an affidavit testified that none of his or her actions were influenced by any contact from my office or from me. (Wall Affidavit, Sp. Coun. Ex. 428, p. 6, para. 9); (Rosemary Stewart, 1/2/91, pp. 10–11, 196); (Wall, 12/4/90, pp. 104, 116, 181–2, 184, 191); (Martin, 12/3/90, p. 58; Martin Affidavit, Sp. Coun. Ex. 17, para. 11); (Gray, 11/27/90, p. 97); (Patriarca, 11/27/90, p. 147); (Black, 12/6/90, pp. 29–30); (Cranston Ex. 78, Dochow Aff. Attachments A–1 at 19–20 & A–2 at 41).

"3. *No Causal Connection:* It flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for anyone to donate or contribute *anything* to me in order to get me to do *anything*.[12]

"The routine status call that I made to Mr. Wall on November 12 was not motivated by the personal concerns of Mr. Keating. The jobs and financial security of thousands of my California constituents were at stake. I made the call for the same reason that I attended the April 2, 1987 meeting—because I believed it was necessary and proper that I do so on behalf of my many constituents who had stakes in Lincoln.

"The Resolution is incorrect in concluding that Mr. Keating asked me to contact Mr. Wall when I was on the phone with him in Mr. Grogan's presence. At best, there is conflicting testimony on this point. (AC, 4/30/90, pp. 188 & 190); (JG, 12/14/90, p. 162). I do not recall a request from Mr. Keating on November 6 that I call Mr. Wall. *Nor* do I recall that my November 12 call to Mr. Wall was the result of a request from Messrs. Keating or Grogan.

"The Resolution implies that there was a causal connection between the receipt of the donations and my decision to call Mr. Wall on November 12. There is *no* evidence to support such a conclusion.

"Furthermore, Mr. Grogan testified that there was never 'any suggestion, either by word or by body language, or by a raised eyebrow' that my interest in Lincoln's problems was tied to Mr. Keating's support of nonprofit voter registration efforts. (JG, 12/15/90, p. 132). Mr. Grogan also testified, "There was never an occasion where Mr. Keating asked Senator Cranston to do something and Senator Cranston said, 'only if you raise funds for me.' There was never an occasion where Mr. Keating said, 'If you do this for me, I will raise X amount of dollars for you.'" He testified that there was never 'even the suggestion' that fund-raising and official actions were connected in any way. (JG, 12/12/90, pp. 185–8). I repeatedly have testified that there was no connection between Mr. Keating's donations and my decisions to contact the regulators regarding Lincoln. (AC, 4/30/90, p. 95)."

ECR 3) a) (iii)

(iii) In January 1988, Mr. Keating offered to make an additional contribution to voter registration groups affiliated with Senator Cranston and asked Senator Cranston to set up a meeting for him with Chairman Wall. Senator Cranston did so on January 20, 1988. On February 10, 1988 Senator Cranston received checks totaling $500,000 for voter registration groups.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 19–23 states:

"1. *Donation:* The Resolution incorrectly insinuates that (a) in January, 1988, Mr. Keating offered to make an additional charitable donation in connection with his asking me to set up a meeting for him to meet with Mr. Wall; and (b) based on my setting up the meeting, Mr. Keating made charitable donations in February. The Resolution's insinuation is unfair and inaccurate and cannot be substantiated in any way.

"There is *no* clear and convincing evidence that Mr. Keating offered to make an additional donation in January, 1988.

"Mr. Keating did make two charitable donations to voter registration groups on February 10, 1988 in Phoenix. The Resolution omits the fact that these were two I.R.S. approved charitable, tax-deductible donations to 501(c)(3) organizations for non-partisan, voter participation efforts. One was to Forum Institute, an organization I've already described. The other was to The Center for Participation in Democracy, that engaged in and supported non-partisan registration drives in several states. *Neither* of these two organizations, nor the use of the money, was under my control.

"Regarding this period, there is considerable testimony about a dinner I attended in January with Messrs. Keating, Grogan, and others. Mr. Grogan testified that he recalls no discussion of fund-raising at the dinner. (JG, 12/14/90, p. 166; 12/13/90, p. 24 & p. 265). My son, Kim Cranston, who was present, testified that he recalls no specific offer of sup-

port by Mr. Keating. (KC, 6/28/90, p. 15). I testified similarly that (a) I did not solicit any funds at the dinner, (b) that I did not recall the discussion of any specific funds, and (c) that Mr. Keating may have indicated in a *vague* way that he would continue to support registration efforts. (AC, 4/30/90, p. 191; 10/16/90, p. 87).

"Mr. Grogan testified that he was not aware of any solicitation that preceded my February 10 visit to Phoenix. (JG, 12/13/90, pp. 261–2).

"My visit to Phoenix had been in the works since at least September of the previous year. (JJ, 12/3/90, pp. 164–6). Messrs. Keating and Grogan had a long standing policy of inviting members of Congress, their staffs, and others to visit Phoenix to see the Lincoln/American Continental Corporation operation first hand. Many Congressmen and staff members have visited his company in Phoenix. Mr. Grogan testified that he had invited me to visit Phoenix several times. (JG, 12/14/90, pp. 169–70; 12/15/90, pp. 199–20). I had wanted to visit to see for myself the type of operation Mr. Keating was running. (AC, 4/30/90, p. 184). This was the first time that my schedule permitted this trip. (JJ, 7/19/90, p. 167); (JG, 12/13/90, p. 17). Ergo, this trip *was totally coincidental* to the Wall/Keating meeting. It *had no connection* with the Wall/Keating meeting.

"It is also equally coincidental that this trip finally occurred at the beginning of a new year, and thus coincided with the timing implicit to Ms. Jacobson's practice of seeking contributions from individuals twice in a given year—early and late. (JJ. 12/2/90, p. 161). Ms. Jacobson, in her capacity as a part-time USAVotes employee, had written me a memo dated February 4, 1988, stating that the main goal concerning Mr. Keating was to receive a charitable donation as soon as possible so that he could be asked for an additional donation in the fall. (Sp. Coun. Ex. 269). She testified that the timing of solicitations of donations was largely driven by her own timetable and that charitable giving is based on an annual cycle. (JJ, 12/3/90, pp. 176, 219).

"By happenstance, this trip to Phoenix was also consistent with my practice of going to visit potential donors—rather than inviting them to visit me—to get help for the registration efforts. (AC, 10/16/90, p. 87); (JJ, 12/3/90, p. 143).

"2. *Official Action:* There is *no evidence* that Mr. Keating committed to make a specific donation in connection with asking me to set up an appointment with Chairman Wall to see him.

"The evidence shows only that Ms. Jacobson sent me a memo dated January 18, 1988 relying a request to her from Mr. Grogan that I help schedule a meeting between Messrs. Keating and Wall. (Sp. Coun. Ex. 172).

"I have testified that I called Mr. Wall on January 20, 1988 and asked him if he would be willing to see Mr. Keating. Mr. Wall responded to me that he was willing to meet with Mr. Keating but it might not be necessary because he thought the problem between Mr. Keating and the Bank Board was being worked out. During my conversation with Mr. Wall, no commitment was made to meet, nor was a firm meeting date arranged. (AC, 4/30/90, p. 249). Mr. Wall testified that he was not sure if I had asked him to meet with Mr. Keating. (Wall Test., 12/4/90, pp. 33 & 131). There is *no evidence that I ever knew about the meeting* that did occur on January 28, 1988. I did not set it up. The arrangements must have been made by Messrs. Keating and Wall or their assistants.

"3. *No Causal Effect:* Once again, it flies in the face of logic and my personal history to suggest that a reasonable person would deem it necessary for *anyone* to make *any* donation in order to induce me to do *anything* or to *reward* me for doing it. I made the call to Mr. Wall regarding a major California business in view of apparent regulatory excesses that were amounting to harassment. The Committee has stated: (a) Senators should and do provide such constituent services; and (b) that there were sufficient reasons to contact the Bank Board regarding Lincoln. (Senate Ethics Committee Statement, 2///27/91, p. 1, para. 4).[13]

"There is no evidence of a causal connection between my January 20, 1088 telephone call and the charitable donations. There is no specific evidence that there was even a solicitation of Mr. Keating or a discussion of any donation prior to the February 10, 1988 trip.[14] In fact, for six months there had been efforts to schedule a trip to Phoenix that finally occurred in February, 1988 and resulted in the receipt of charitable donations. *It is pure coincidence* that the trip finally was scheduled and the donations were received three weeks after my telephone call to Mr. Wall.

"Coincidence in time and unsubstantiated inferences about proper inquiries such as my telephone call and receipt of charitable donations on a trip that had been in the making for many months cannot properly substitute for the lack of clear and convincing evidence of improper linkage, particularly where there is factual and convincing evidence that Mr. Keating *did not* ask me to set up a meeting in connection with a solicitation of a donation of any type."

ECR 3) a) (iv)

(iv) In early 1989, at the time that Senator Cranston was contacting Bank Board officials about the sale of Lincoln, either he or his chief fund raiser discussed another contribution from Keating or his associates. However, no further contribution was even made.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 24–29 states:

"(iv) 1. *Donation:* The Resolution fails once again to point out that this was a solicitation of an I.R.S. approved 501(c)(3) charitable tax-deductible donation, the use of which I did not control. It was *not* a solicitation of political contributions for my benefit. The Resolution accurately states that this donation was never made.

"The Resolution's description of [my "chief fund raiser"] Ms. Jacobson is misleading. In early 1987, she directed the fund-raising staff of the Democratic Senatorial Campaign Committee. At the time in question, early 1989 (and for more than a year before that) she was spending 50% of her time as a consultant to the Democratic Senatorial Campaign Committee; 25% as a consultant to a P.A.C. I founded (Committee for a Democratic Consensus); and 25% as a consultant under contract to USAVotes to raise charitable donations for registration efforts.

"Mr. Rob Stein, the Executive Director of USAVotes, was in charge of its over-all operations. I was one of three co-chairmen of USAVotes. I was not the direct supervisor of Ms. Jacobson in her capacity as a part-time employee of USAVotes, nor was I the direct supervisor of any other USAVotes employees.

"There is conflicting testimony concerning who solicited Lincoln at this time. I have testified that I do not recall discussing a donation with Messrs. Keating, Grogan or anybody during this period. (AC, 10/16/90, p. 68; 5/17/90, p. 299). I do not believe such a discussion ever took place. Mr. Grogan, when asked whether anybody on my staff or I solicited a donation from him or Mr. Keating during this period, testified that Ms. Jacobson, not I, discussed a donation with him. (JG, 12/14/90, pp. 179–80). Ms. Jacobson's recollection was that I solicited Mr. Keating during the period. (JJ, 12/3/90, pp. 167–8).

"I believe the following shows that Ms. Jacobson initiated the solicitation and that she did so without my knowledge.

"A memorandum from Joy Jacobson to me and to Rob Stein, the Executive Director of USAVotes, dated March 1, 1989, written on her home computer, shows that I did not make the solicitation and illustrates the mechanics of how the staff of USAVotes and I worked to solicit charitable donations. (Sp. Coun. Ex. 171). It was Ms. Jacobson's job to come up with the names of people, foundations and organizations which she thought would be potential donors. She would write a memorandum with the potential donors' names, suggestions as to who should contact them, and the amounts to be requested. When I reviewed it, I would look down the list for the names suggested for me. I would systematically try to call most, but not necessarily all, of the names suggested to me. When my part of the list was complete, I would hand it back with my notes about the calls to my secretary. She would report these results back to Ms. Jacobson.

"There are 18 names of potential donors on the March 1, 1989 memo. My handwritten notes or my secretary's notes appear under 12 of those names—only those that were proposed as my assignments.

"It is clear that Ms. Jacobson assigned herself three names on the first page: AFSCME, Dick Darling, and Charlie Keating. After Mr. Keating's name these words are typed in the memo: 'Joy is talking with Jim Grogan. 100,000 wherever it's needed.'

"This evidence corroborates Mr. Grogan's testimony that Ms. Jacobson, not I, made solicitation. It indicates that her memory was incorrect when she testified that I solicited Mr. Keating. It shows that on the date of the memo, March 1, 1989, she had already discussed a $100,000 donation with Mr. Grogan.

"Ms. Jacobson's solicitation of Mr. Grogan is consistent with her explanation in her testimony 'that the first group you go back to [at the beginning of each year is] your past donors and try to renew them.' (JJ, 12/3/90, p. 161). Her solicitation of Mr. Grogan on her own is further evidenced by Ms. Jacobson's statement that 'the timing of the fund-raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.' (JJ, 12/3/90, p. 176). She also stated that I never suggested to her to time any request for a donation to coincide with anything before the Bank Board or with any other event or events. (JJ, 12/3/90, pp. 175–6).

"2. *Official Action:* The record shows that, working on an entirely different track from Ms. Jacobson, I called Chairman Wall and Bank Board Members Roger Martin and Larry White between February and April 1989 for the sole and limited purpose of urging that careful consideration be given to three different proposed sales of Lincoln.

"Both Mr. Wall and Mr. Martin testified that in none of my calls did I urge final approval of any sale, and that there was nothing improper about the nature of my calls. (Sp. Coun. Ex. 428, Wall Affidavit, para. 10h, 12); (Sp. Coun. Ex. 17, Martin Affidavit, para. 11). The Resolution fails to describe the very

limited and non-advocacy nature of my calls. It also fails to note that when Messrs. Keating or Grogan asked me to push hard for the approval of a specific sale of Lincoln, I refused to do so. (AC, 5/7/90, pp.327–8); (Wall, 12/4/90, p.91).

"3. *No Causal Connection:* It is again absurd to suggest that a donation of *any* sort would be necessary to motivate me to help my California constituents. There is no evidence that I contacted the Bank Board regarding the potential sale of Lincoln because of any donation. I made the calls because a proper sale would resolve a situation that otherwise could have led to a financial catastrophe in my state, California, that would have been financially injured countless constituents of mine.

"For whatever reason, none of the sales materialized. However, the concerns that motivated my calls did occur. The consequences have been catastrophic; a cost to taxpayers presently estimated by the Resolution Trust Corporation to be $2.6 billion; tragic losses of the life savings of 23,000 Californians, mostly elderly and infirm, who bought approximately $200 million in now worthless debentures at Lincoln; and the loss of many jobs in California. The Committee correctly found that my contacts with regulators and those of the other four Senators were not the cause of the eventual failure of Lincoln or the thrift industry in general. (Committee Statement, 2/27/91, p. 1, para. 5).

"The Resolution ignores my true motivation for making the telephone calls between February and April, 1989, instead favoring the *inference* that the calls were motivated by a possible charitable donation that was never made. This inference ignores my legitimate motivation: to prevent financial damage to many of my constituents.

"In response to the inference I point to the clear and convincing evidence that (a) I did not solicit a charitable donation, and that (b) I did not know that Ms. Jacobson had made a solicitation until I read her memo of *March 1, 1989*. Once I knew, the knowledge had no effect on my conduct.

"Ms. Jacobson testified that she was not aware that Messrs. Keating or Grogan was talking to me about the sale, nor that I was being asked to do anything about it. (JJ, 7/19/90, p. 179).

"*There is absolutely no evidence* of any causal connection between (a) Ms. Jacobson's solicitation, and (b) my telephone calls in 1989 to regulators regarding possible sales of Lincoln. Here, again, unsubstantiated inferences based solely on mere coincidence of time *cannot be a substitute* for evidence of a causal connection between a solicitation and an official action.

"The *fair inference* from the record is that Ms. Jacobson was on one track following up according to her standard practice with one of the few established contributors whom she solicited personally and regularly at the beginning of each year. Meanwhile, I was on another track taking very limited official actions contacting regulators regarding the possible sale of Lincoln—actions for which there was clear and independent constituent related justification. Senator DeConcini made the same type of inquiries for similar reasons.

"The foregoing analysis of each of the four 'occasions' cited in the Resolution demonstrates that there is absolutely no evidence of a causal relationship between any of Mr. Keating's donations and any of my actions, and that there is overwhelming evidence to the contrary.

"I remind the Committee again of Mr. Grogan's response when my attorney asked him the following question: 'Was there any suggestion, either by word or by body language, or by raised eyebrow, that Senator Cranston's interest in Lincoln Savings' problems was tied to Mr. Keating's support of the non-profit voter registration efforts?' Mr. Grogan replied, 'Never.' (JG, 12/15/90, p. 132).

"The Special Counsel has cited no evidence that Mr. Keating authorized donations only on condition that I would help him, or because I had helped him. He cited no evidence that I agreed to help only if Mr. Keating contributed.[15]"

ECR 3) b) (i)

b) Senator Cranston's Senate office practices further evidenced an impermissible pattern of conduct in which fund raising and official activities were substantially linked, in that, with his knowledge, permission, at his direction, or under his supervision, Senator Cranston's fund raiser (who was not a Senate employee):

(i) Senator Cranston's fund-raiser assisted in scheduling and attended meetings in the Senator's Senate office between the Senator and contributors about legislative or regulatory issues.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS). pp. 31–32 states:

"Mr. Grogan met Ms. Jacobson in 1984. (JG, 12/12/90, pp. 71–73); (JJ, 12/3/90, p. 91; 7/19/90, p.37). He testified that he would call her to schedule appointments until he became acquainted with members of my Senate staff and began to turn to them to arrange appointments. (JG, 12/12/90, p. 93).

"Ms. Jacobson testified that after March, 1987, the only meetings which she was involved in arranging were for fund-raising or social purposes, not substantive purposes. (JJ. 12/3/90. p 96). She testified that she didn't know about the April 2 and April 9 meetings until long after they occured. (JJ, 12/3/90, p. 130). She testified that she arranged *no* substantive meetings during the entire two year period from April, 1987, to April, 1989, during which the other three 'occasions' occurred that raise questions of causal connections. [Referred to in Paragraph (a) 1 of the Resolution].

"The Resolution inaccurately states that Ms. Jacobson scheduled meetings for me. The evidence shows that she had to go through my Secretary or my Administrative Assistant to place appointments on my schedule.[16] (JJ, 7/17/90, p. 76).

"Ms. Jacobson's testimony differs from mine about why she attended such meetings. I have testified that Ms. Jacobson suggested to me that it would be helpful for her to be present so she would know what was going on. (AC, 4/30/90, p. 24). She testified that she was there to make sure that the charitable donor felt at home in my hectic and crowded office before I arrived or if I were called away on Senate business. (JJ, 12/3/90, pp.86–90).

"Ms. Jacobson has testified, and I confirm, that she never participated in substantive discussions in any meetings, (JJ, 12/3/90, p. 86). Moreover, Ms. Jacobson testified that she often paid no attention to the substantive discussion: 'While a substantive discussion was going on, I often would get up and go make phone calls outside of the office. There's round table that I often worked at in Senator Cranston's Whip office. While a substantive meeting was going on in another section of the same room, I would be off doing something else.' (JJ, 12/3/90, p. 90).

"To the best of my knowledge, Ms. Jacobson never attempted to influence an official action in any way. Neither anyone on my staff not I made a decision to substance based on any actions by Ms. Jacobson.

ECR (3)(b)(ii)

(ii) Senator Cranston's fund-raiser served as an intermediary for Mr. Keating or Mr. Grogan when they could not reach the Senator or his banking aide.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), p. 33 states:

"The Resolution's use of the word 'intermediary' is misleading and unfair. The record shows, as I have just indicated, that Ms. Jacobson did not engage in any substantive negotiations or take any substantive actions. She testified that she simply passed messages along occasionally when Mr. Grogan was unable to reach me or members of my Senate staff. (JJ, 12/3/90, p. 156). Ms. Jacobson testified, 'It was Jim Grogan's nature to just keep dialing until he got somebody. Again, it usually had to do with something that was going to happen and he needed to get a hold of somebody, whether it was Roy [Greenaway] or Alan [Cranston] or Carolyn [Jordan], and I would say, I'll pass it along.' (JJ, 7/19/90, p. 168).[17] Ms. Jacobson also testified, '. . . At the beginning they always did call me. My understanding is that later on they often didn't call me, that they called Roy Greenaway [my Administrative Assistant] or they call Mary Lou [McNeely, my Secretary] directly or they just showed up at the office.'" (JJ, 7/19/90, p. 164).

ECR (3)(b)(iii)

(iii) evidenced, through written memoranda addressed to Senator Cranston, an incorrect understanding that contributors may be entitled to special attention and special *access* to official services. The incorrect understanding was never corrected by the Senator.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 34–37 states:

"The Special Counsel focused on one memo dated January 7, 1987. (Sp. Coun. Ex. 154). It was written prior to *all* the specific donations referred to in the Committee's Resolution.

"Ms. Jacobson did *not* state—as the Resolution indicates—that the individuals she mentioned in her January 7 memo were 'entitled to special attention and special access to official services.' She said the individuals expected 'some kind of resolution' of pending matters. That is exactly what every constituent, whether a contributor or not, rightfully expects from their Senator. That is exactly what every constituent of mine gets, whether he is a contributor or not, to the best of my ability and my staff's ability. Note that Ms. Jacobson did not state that these individuals could rightfully expect a favorable resolution. She said they would expect 'some kind' of resolution.

"She explained the meaning of intent of this memo in her testimony. She testified that the individuals she mentioned, like all constituents, were entitled to a response from me as to what, if anything, I was going to do about their problems—not necessarily a positive response or resolution—but *some* response or resolution. (JJ, 7/19/90, p. 99–101; 12/3/90, pp. 204–5). They may not like the response, but they like all constituents are at least entitled to be heard and to be given a decision. That is all Ms. Jacobson advocated and that is all I ever tried to provide.

"Furthermore, Ms. Jacobson testified that several individuals mentioned in her January 7 memo, including Mr. Keating, did not get the results they wanted. (JJ, 12/3/90, pp.

205–6). I understand how someone with 20/20 hindsight might question the implication of Ms. Jacobson's words, but my deeds followed the *words*, not the *implications*.

"Improper inferences drawn from a memo written by someone else, not by me, *must not be accepted as a substitute* for clear and convincing evidence of causal connections between my official actions and donations.

"The only other memos I am aware of from Ms. Jacobson simply passed on information or contained updates on charitable donations.

"Moreover, and in fundamental fairness to Ms. Jacobson, I believe that the Resolution *unfairly implies* that she lacked understanding of proper policy regarding donations and official actions. Ms. Jacobson testified that she knew there could not and must not be a quid pro quo between official actions and donations, and that my absolute firm office practice was to have nothing to do with any potential donor who sought to link a donation to official action. (JJ, 12/3/90, pp. 223–4, 239–40).

"Specifically, in relation to Lincoln, Ms. Jacobson testified that neither Messrs. Keating, Grogan nor I ever indicated that *any* donations were made with any understanding that I would do *anything* in return (JJ. 12/3/90, pp. 175–6):

Q. Did Mr. Grogan ever tell you that the contributions were made with the understanding that Senator Cranston would do anything in return?

A. Absolutely not.

Q. Did anyone whom you knew to be associated with Lincoln Savings or American Continental ever tell you that any of the contributions were made with the understanding that Senator Cranston would do something in return?

A. No.

Q. Did Senator Cranston ever say to you that he thought that the contributions which you have discussed were made with an expectation that he would act in any way on behalf of Mr. Keating, or Lincoln or American Continental?

A. No.

Q. To your knowledge, did Senator Cranston to anything for or on behalf of Lincoln Savings because Mr. Keating assisted his reelection campaign?

A. No.

Q. Did he to your knowledge do anything for or on behalf of Lincoln Savings because Mr. Keating contributed money to USA Votes, Forum Institute or the Center for Participation in Democracy?

A. No.

Q. Did Mr. Keating or anyone associated with him ever tell you that a contribution would be made after Senator Cranston made an inquiry on his behalf?

A. No.

Q. Did Senator Cranston ever tell you or suggest to you that you should time any request for contributions to coincide with anything occurring before the Bank Board?

A. No. In fact, the timing of the fund-raising was something that was driven by my finance plan. If anyone was controlling the timing, I would say I was.

Q. Did Senator Cranston ever tell you to time a solicitation to Mr. Keating to coincide with any event or events to your recollection?

A. No.[18]

"The Resolution inappropriately states that Ms. Jacobson understood that donors were entitled to special access. Mr. Grogan testified that he was able to obtain my attention—in other words get access to me—before any of the charitable donations for voter registration were made by Mr. Keating. (CG, 12/15/90, p. 132).

ECR p. 5: Be it further resolved that the Committee finds:

(1) That in connection with his conduct relating to Charles H. Keating, Jr., and Lincoln Savings and Loan Association, Senator Alan Cranston of California engaged in an impermissible pattern of conduct in which fund raising and official duties were substantially linked in that:

(a) From early 1987 through April 1989, Senator Cranston personally or through Senate staff contacted the Federal Home Loan Bank Board on behalf of Lincoln, during a period when Senator Cranston, on behalf of organizations in whose success he had a deep concern, was soliciting and accepting substantial contributions from Mr. Keating; and

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS), pp. 51–55 states:

"The Resolution easily could give the erroneous impression to anyone not familiar with the facts that the donations referred to were all of a political nature to some campaign or P.A.C. of mine. It omits any reference to the established and undisputed fact that 85.3% of the money—totaling $725,000—that Mr. Keating donated from early 1987 through April, 1989 was in the form of I.R.S. approved 501(c)(3) tax-deductible charitable donations to organizations that were not under my control and whose use of the money was not under my control.

"In addition, Mr. Keating donated $125,000 to America Votes, an organization that raised tax-deductible charitable donations for I.R.S. approved 501(c)(3) independent, nonpartisan, grass roots, voter registration organizations in approximately 20 states during 1987 and 1988.

"The Resolution fails to point out that *none* of Mr. Keating's donations which are being questioned during this period was in the form of a political contribution to any campaign of mine. Only $10,000 was to a federal P.A.C. that I organized.

"The Resolution ignores the important fact that *all* these donations were made *after* my 1986 reelection. An expert on voting, Curtis B. Gans, Director of the nonpartisan, nonprofit, Committee for the Study of the American electorate, testified that registration efforts in California in 1987 and 1988 that were supported by some of the funds I raised would have had "negligible impact" on my reelection campaign four years later (had I chosen to run in 1992). "I could think of no less cost-effective way of advancing one's own interest," he testified. (Affidavit of Curtis B. Gans, Cranston Exhibit 77).

"Section (a)(1) of the Resolution fails to make clear that *all* the contacts I had with regulators during this time—and at all other times—were standing alone, not only proper, as the Committee's Statement of February 27, 1991 acknowledges, but were also de minimis. The established fact is that they were all routine status inquiries, or requests that somebody see somebody, or requests that various proposed sales of Lincoln be carefully considered. The Committee fails to make that in *none* of the contacts I made did I ever advocate any particular action. It fails to make clear that I *never* urged the regulators to take or refrain from any particular action.

"Thus the alleged improprieties that the Resolution suggests occurred arise solely because of routine, non-substantive inquiries I made on behalf of constituents that may have been in some way proximate in time to the solicitation or receipt of charitable or related donations.

"I previously have noted in statements to the Committee that my actions in respect to Mr. Keating *should not be viewed as if they occurred in a vacuum*. I pointed out that my days and my nights are characterized by constant, passionate work on the great issues of our time, like war and peace, the environment and the economy, justice, and equal rights. I cited my many responsibilities during the time these events occurred, including my leadership role in the Senate as Majority Whip: My Chairmanship of the Veterans' Affairs Committee; my membership on several other committees and the Chairmanship of busy and important subcommittees; my very active role in fund-raising for other Senators and causes as well as for my campaigns; and the fact that—along with my Senate colleague from California—I represent many more constituents (30 million) than do any other Senators. Indeed, California's Senators *represent more constituents* than any other legislator *has ever represented* in any country in the *entire history of legislative bodies*.

"Constantly, I am called upon for help by my constituents. Unlike a corporation, I do not have the funds and the capacity to verify the financial status or the moral stature of each constituent who presents a problem to me. I cannot ask Dun and Bradstreet or the FBI to provide me with this information. More than 300,000 constituent requests have been handled by my staff and me in the 22 years I have been in the Senate. I deeply regret that one involving Lincoln Savings has created the problem that is before us.

"A casual observer of the hearings might well have obtained the false impression that I did little else over several years except deal with regulators regarding Lincoln. This is not the case. *In the almost two year period* between the April 1987 meetings and February 8, 1989, *I had only five contacts* with Federal regulators regarding Lincoln. I had no contact at all between May 16, 1988, when Mr. Wall requested an appointment with me to discuss legislation, and February, 1989, when the sale of Lincoln came up.

"In the period from February 8 through April 14, 1989, I had only five contacts with FHLBB members Wall, Martin and White regarding *three different proposals* to sell Lincoln. All contacts that I initiated were proper status inquiries. I had a legitimate basis for making them. All these contacts related to the interests of many thousands of my constituents whose jobs and financial well-being depended upon the fate of Lincoln.

"I by no means responded favorably to every request by Messrs. Keating or Grogan for me to take some official action. I already have cited my refusal to push hard for the approval of a specific sale of Lincoln. Mr. Grogan in his testimony cited several examples of requests for actions that I declined to take. (JG, 12/12/90, p. 113; 12/13/90, pp. 130, 206–7, 215, 306, 12/15/90, pp. 93–4, 96–8).

"Besides citing many facts that contradict the causal connection theory concerning charitable donations and my official actions, I have presented a list of inaccuracies and important facts that were omitted in the Committee documents of February 27. In all fairness, these matters should be corrected in the final documents that are issued by the Committee.

"A fair question to ask is: To what extent was the Committee influenced by these omissions of important facts, inaccuracies, and unwarranted implications in material put before it while reaching its conclusions announced on February 27, 1991?

"I protest allegations of linkage, explicit or implicit, based merely on unsubstantiated and prejudicial inferences instead of demonstrable evidence.

"I am convinced that a full and further review of the record, in light of my Submission, can only lead to three conclusions:

"First, there is no evidence of a causal connection between any solicitation or donation and any official action on my part.

"Second, that my conduct was not materially different from that of the other four Senators involved.

"Third, that whatever differences there were between the actions of the four Senators and mine they were not differences of *kind*. A fair and impartial consideration of this matter can only lead one to the conclusion that the Committee's treatment of my actions *should not differ in kind* from the treatment it accorded Senators DeConcini, Glenn, McCain and Riegle. I concede that I should have recognized that fund-raising—even for charitable donations—close in time to official actions could lead to an appearance of impropriety. It was a mistake not to have given more thought to appearances."

ECR p. 5: Be it further resolved that the Committee finds:

ECR 1)(b)

b) Senator Cranston's Senate office practices further evidenced an impermissible pattern of conduct in which fund raising and official activities were substantially linked.

This statement is a distortion of the facts. *Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ASC), pp. 30.55 states:*

"The Resolution raises questions . . . about my Senate office practices, citing three examples of activities engaged in by Ms. Jacobson, a part-time employee of USAVotes, over whom I had no real supervisory role. I have already indicated that she was *not* a member of my Senate staff. She had no substantive expertise in Banking Committee issues and did not substantively involve herself in my official Senate activities. The words "Senate office practices" is inaccurate and misleading. Ms. Jacobson came to my office occasionally, but by no means frequently or regularly. She worked out of her home in Virginia. Unlike the practice in some Senate offices, I have never assigned major political fund-raising responsibilities to any one serving part time to full time on my Senate staff. I have designated two Senate staff members under Rule 41, but they have done comparatively little political fund-raising. All fund-raising efforts with which I have been involved, whether political or charitable, have been the responsibility of individuals employed elsewhere—*not* in my Senate office.

"Although some of Ms. Jacobson's activities are susceptible to an interpretation that they raise an *appearance* of impropriety, they do not constitute clear and convincing evidence of a causal connection between (a) my personal official actions and (b) solicitations of donations I made or of which I was aware.

"I concede that I should have constrained more closely the individual who was working for an organization that raised charitable contributions.

"I readily concede these errors, but these were errors in judgment, not in intent.

"I deeply regret them.

"Without any clear and convincing evidence that any official action of mine was causally linked to any donation, however, there is no reason for the Committee to recommended institutional action in my case."

It is further resolved:

1) That Senator Cranston's impermissible pattern of conduct violated established norms of behavior in the Senate, and was improper conduct that reflects upon the Senate, as contemplated in Section 2(a)(1) of S. Res. 338, 88th Congress, as amended.

Senator Cranston's April 22, 1991 Written Submission to the Ethics Committee (ACS). pp. 4–5, 43–47 states:

"Since timing and appearances did not warrant institutional action in the cases of the other Senators, it should not in my case.

"The Senate have never set standards *of any kind* governing the timing of contributions of any kind in relationship to legitimate constituent services. I fully recognize that if a Senator engages in conduct that is inimical to generally accepted and understood standards and values, the Senate has an obligation to find that Senator guilty of improper behavior, although his conduct does not violate a specific law or Senate Rule. There is no evidence that I engaged in any improper conduct.

"Without clear and convincing evidence of actual impropriety, there is no justification for subjecting me to disciplinary action. There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate has *never* determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful donation to the Senator's campaign or to a charity the Senator supports. To do so now would be contrary to the principles of the Senate and a violation of traditional concepts of fair play by proceeding in an *ex post facto* fashion.

"In every case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's *private* profit. Neither any member of my family nor I received any compensation or personally benefited in any way from these charitable contributions. I had no financial interest in Lincoln Savings, its parent, or affiliates. I received no income from it.

"I will discuss the Special Counsel's proposal to extend to Senators the appearance standard in the Code of Ethics for Government Service that applies to federal judges and civil servants. The Senate has never adopted that code as an ethical standard applicable to Senators. There is no reference to it in any of the over 400 published Interpretative Rulings issued by the Select Committee on Ethics. The Special Counsel overlooks fundamental differences between federal judges and civil servants. Federal judges and civil servants do not have to raise funds to stay in office. A judge is not expected to serve the interests of the parties before him. A Senator is expected to *represent* his constituents, and to be—and to appear to be—responsive to their legitimate needs. Senators should not be at risk of discipline for violation of an appearance standard that would prevent us from intervening on behalf of constituents, contributors and non-contributions alike, when intervention is appropriate.

"The Committee did not conclude that there was any causal connection between these three coincidences of receipt by Senators Riegle, DeConcini and Glenn of these political contributions in proximity of time to their official actions. How, then, could the Committee without *any* substantiating evidence conclude that there was any causal connection between my receipt—on behalf of others—of charitable and related donations and my official actions? My case, like the cases of Senators Riegle, DeConcini and Glenn, *can only involve* questions of judgment and appearances.

"I believe, too, that our actions did not differ in kind from legitimate actions of our 95 colleagues. Virtually every Senator raises funds for his campaigns and renders legitimate services to his constituents, including contributors, when they need it. I have noted previously that many Senators are active in one way or another with charitable organizations and some Senators raise very substantial money for them.

"THERE ARE NO U.S. SENATE RULES, PRECEDENTS, OR CASES IN WHICH A SENATOR HAS BEEN DISCIPLINED FOR ASSISTANCE TO A CONSTITUENT WHEN THE SENATOR RECEIVED NO PERSONAL FINANCIAL PROFIT

"If the Committee believes there should be limits on a Senator's ability to perform his official duties for a contributor based upon the timing or proximity of a donation to an official act, it may recommend that change to the full Senate and allow all 100 members of this body to debate such a proposed rule.

"It would be contrary to the principles of the Senate and a violation of traditional concepts of fair play to apply such a rule to me now *in what would clearly be an ex post facto fashion*.

"There is *no precedent* for the Senate disciplining a Senator for actions such as mine. The Senate *never* has determined that it is an ethics violation for a Senator to engage in legitimate constituent service on behalf of a contributor because it was—or might appear to be—close in time to a lawful contribution to the Senator's campaign or to a lawful donation to a charity that the Senator supports.

"The Senate has to date rejected attempts to create Ethics Rules that would restrict the ability of its members to give their supporters the impression that they will be responsive to their needs. There is a *fundamental difference* between a Senator acting on behalf of a constituent and a Senator acting for his personal gain. It is one thing to say that a Senator should not do anything in his official capacity that appears to bring him personal gain. It is quite another to say he should not do anything in his official capacity that appears to benefit supporters or contributors. The former is a conflict of interest and a violation of public trust. The latter is not only *not* a violation of trust, but a fulfillment of it. Its appearance can seem improper only to those who distrust the system itself.

"In *every* case of financial impropriety considered by the Senate throughout its history, the alleged misconduct was the use of public office for a Senator's private profit. The last four Senators who were disciplined by the Senate were involved in actions that resulted in *personal* gain. There has *never* been a case that has led to the disciplining of a Senator for assisting, or appearing to assist, a constituent-contributor when the Senator received no personal profit.[19]

"The history of conflict of interest rules for the Senate and the House demonstrates that the evil at which all those efforts have been directed is the use of elective office for *personal* gain.

"Senate Rule 37, the conflict of interest rule, distinguishes between personal and political benefit. It prohibits Senators and staffers from intervening with federal agencies for the purpose of furthering their financial interest or receiving compensation from a constituent. Its application is limited to agency intervention 'resulting in measurable *personal* financial gain.'

"The Senate in 1977 rejected a proposed rule suggesting that the motive of a contributor could make a contribution improper. Senator Nelson, Chairman of a Special Committee, had proposed that Rule 35, pertaining to gifts, also should ban acceptance of anything "intended to affect the present or future performance of official duties." Senator Stevens attacked the proposal as 'something no one can live up to if he is honest with himself and the American people . . . It is a standard of conduct with which one cannot comply in good faith and good conscience as a member of the U.S. Senate.' Senator Nelson finally agreed, saying, 'I do not think it makes sense at all, and someone who was working overtime and got tired must have written it.' (pp. 144–5, Davidson Legal Counsel Report, March 1991).

"The Committee acknowledges in its Statement of February 27, 1991 that the Senate presently has no specific written standards embodied in Senate rules respecting contact with Federal or independent regulatory agency officials. The Committee suggests a process for establishing such standards and states that until that is accomplished, 'All Senators are encouraged to use House Advisory Opinion No. 1 as a source of guidance for their actions.'

"House Advisory Opinion No. 1 indicates that it is proper for a member to communicate with an executive or independent agency on any matter to request information or status reports; to urge prompt consideration; arrange for interviews or appointments; express judgments; call for reconsideration of an administrative response that the member believes is not supported by established law, Federal regulation or legislative intent; or perform any other service of a similar nature in this area that is compatible with the criteria expressed in the Advisory Opinion.

"The Advisory Opinion makes *absolutely no reference* to campaign contributions or charitable donations, or to the timing of campaign contributions or charitable donations solicited or received by a member who performs any of these approved and specified actions. It notes that it is a felony to seek or receive "compensation for any services rendered.

"All my actions with respect to Lincoln were well within the guidelines of House Advisory Opinion No. 1."

FOOTNOTES

[1] Many of these same inconsistencies are also in the Report of Special Counsel, Robert Bennett, that Senator Helms released to the press on August 2, 1991 in violation of the Ethics Committee rules.

[2] William Seidman subsequently said, referring to the Arthur Young and Alan Greenspan letters, "Those two documents, I think, were pretty extraordinary for Senators to receive in terms of convincing them of the possibility that the bureaucracy was out of control. The Senators had a couple pieces of paper that could have raised questions in their mind. You have to say this on behalf of the Senators: they got a letter from a Big 8 accounting firm, the likes of which I think had never been done before in history in which the firm on the stationery said the regulators are harassing the company, treating them unfairly, et cetera." (AC, 4/30/90, p. 105).

[3] Such status inquiry calls are certainly routine for most if not all Senators. (Senate Ethics Committee, 2/27/91, p. 3, para. 1).

[4] Back in the 70's, another large corporation, Lockheed, was facing bankruptcy. Lockheed had invested millions of dollars in my state. The livelihoods of many thousands of my constituents and their families were at risk—as was the case with Lincoln Savings. I devoted far more time and effort and made many more phone calls about Lockheed's plight than I ever did about Lincoln's as I successfully endeavored to obtain a government guaranteed loan for Lockheed.

Lockheed was not a contributor to my campaigns or causes. In fact, Lockheed had contributed to my opponent in the previous election.

[5] Again, such phone calls are certainly routine for all or most Senators. The Supreme Court has noted, "The making of appointments with government agencies is a 'legitimate errand' performed by Members of Congress for constituents." (*Brewster* 408 U.S. at 512). The Supreme Court has also judicially observed that Senators may be more aggressive than any of the five of us were in dealing with the Bank Board: "Senators are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may *cajole* and *exhort* with respect to the administration of a statute." (Gravel v. U.S., 408 U.S. 606, 626, 1972).

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[7] It would not have been unusual for Mr. Keating to make an unsolicited donation. The record shows that in 1985, he made an unsolicited $200,000 political contribution to Senator Glenn's Political Action Committee.

[8] In December, 1990, the San Francisco Chronicle falsely accused me of trading favors for cash. When I threatened to sue the Chronicle for libel, the Chronicle published a complete Page One retraction.

[9] That is why I have voluntarily made my tax returns public for many years. That is why I established a blind trust during my first term in the Senate. That is why I stopped accepting honoraria.

[10] William Seidman subsequently said, referring to the Arthur Young and Alan Greenspan letters, "Those two documents, I think, were pretty extraordinary for Senators to receive in terms of convincing them of the possibility that the bureaucracy was out of control. The Senators had a couple pieces of paper that could have raised questions in their mind. You have to say this on behalf of the Senators: they got a letter from a Big 8 accounting firm, the likes of which I think had never been done before in history in which the firm on the stationery said the regulators are harassing the company, treating them unfairly, et cetera." (AC, 4/30/90, p. 105).

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[15] In December, 1990, the San Francisco Chronicle falsely accused me of trading favors for cash. When I threatened to sue the Chronicle for libel, the Chronicle published a complete Page One retraction.

[16] Ms. Jacobson's activities should be considered in the context of Senate Rule 41 that permits Senators to appoint up to three members of their staffs who may solicit and receive campaign and political contributions. Ninety-nine Senators had done so as of November, 1990. All 99 Senators appointed key staffers, including 90 Administrative Assistants, who could raise and receive contributions while simultaneously possessing the enormous power to schedule appointments; to draft, amend, advance or delay legislation; and to deal with the Executive Branch and regulatory agencies.

Thus, the Senate has ruled that there is no impropriety and no appearance of impropriety if a Senate staffer who raises funds also schedules and attends meetings where substantive matters are discussed with a constituent-contributor. It seems to me that if there is a question of appearances if a fund-raiser who is not on the Senate staff attends such meetings, there is at least an equal possibility of an appearance question when the roles are commingled.

[17] I must note a separate but relevant matter that was established during the hearings involving Bill White, who had formerly been Senator Glenn's Administrative Assistant. Mr. White subsequently left Senator Glenn's staff and proceeded to serve as Chairman and Treasurer of the John Glenn committee, Inc. Mr. White received a letter dated June 6, 1984 from Mr. Grogan. The letter began as follows; "Dear Bill: Many thanks for arranging to meet with Bob Kielty regarding the JHG fundraiser in Phoenix. Also many thanks for coordinating with Dan Dougherty, et cetera, regarding the proposed FHLB regulation limiting direct investments by insured institutions." (Sp. Coun. Ex. 33); (Glenn, 1/4/91, pp. 225–6).

In this instance the Committee did not feel it necessary to be critical of Senator Glenn for the fact that his fund-raiser, who was not on his Senate staff, was coordinating in substantive areas.

[18] The Testimony of my Banking Committee aide, Ms. Jordan, substantiates Ms. Jacobson's. The Special Counsel asked her if it was the general philosophy of my office that donors could rightfully expect some kind of resolution of the issues that they brought to her. She replied that it was the policy of our office to respond to all inquiries. There was no mechanism for keeping staffers informed of who were contributors, nor any effort to do so in any way. Ms. Jordan certainly made no inquiries about whether somebody was a contributor before she decided how to act on a particular request. Ms. Jordan testified, "It was basically our posture that we resolved everything as far as one way or another, either for or against."

The Special Counsel asked Ms. Jordan how she set priorities, how she decided which complaints got handled first and in depth. She responded, "I've never had that problem. I can't remember having a problem like that where I had to stop doing something for one person to do something for another." (Cj, 6/27/90, pp. 57–8).

[19] In one case in 1873 when the Senate investigated whether Senators Harlan and Patterson had been bribed by an offer of Credit Mobilier stock at preferential rates, the Senate also considered whether Senator Harlan's conduct violated ethical standards because of a related campaign contribution. A special Senate Committee apparently found that the contribution was made to influence Senator Harlan, but the Committee recommended no disciplinary action because the contribution did "not appear to have influenced his action as a Senator." (pp. 59–60, Senate Legal Counsel Memorandum to Select Committee on Ethics, March 1991).•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign

country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Steven M. Chase, a member of the staff of Senator BROWN, to participate in a program in Taiwan sponsored by the Soochow University on December 3–7, 1991.

The committee has determined that participation by Mr. Chase in this program, at the expense of Soochow University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Rolf Lundberg, Jr., a member of the staff of Senator PACKWOOD, to participate in a program in Mexico City sponsored by the Mexican Business Coordinating Council [CCE] on December 3–6, 1991.

The committee has determined that participation by Mr. Lundberg in this program, at the expense of CCE, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Patrick Mulloy, a member of the staff of Senator RIEGLE, to participate in a program in Korea sponsored by the Korea Institute for International Economic Policy [KIEP] on December 8–14, 1991.

The committee has determined that participation by Mr. Mulloy in this program, at the expense of KIEP is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Senator ROTH and Daniel Bob, a member of the staff of Senator ROTH, to participate in a program in Australia sponsored by the Australian Government and the United States Government on December 5–15, 1991.

The committee has determined that participation by Senator ROTH and Mr. Bob in this program, at the expense of the Australian Government and the United States Government is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Karen Robb, a member of the staff of Senator DECONCINI, to participate in a program in China sponsored by the Chinese People's Institute of Foreign Affairs on November 30 to December 15, 1991.

The committee has determined that participation by Ms. Robb in this program, at the expense of the Chinese People's Institute of Foreign Affairs is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Warren K. Erdman, a member of the staff of Senator BOND, to participate in a program in Hungary and Poland, sponsored by the American Council of Young Political Leaders [ACYPL] and the Hungarian Government, from May 27 to June 5, 1991—9 days.

The committee determined that participation by Mr. Erdman in this program, at the expense of ACYPL and the Hungarian Government, was in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Marie Blanco, a member of the staff of Senator INOUYE, to participate in a program in Taiwan sponsored by the Soochow University on January 12–19, 1991.

The Committee has determined that participation by Ms. Blanco in this program, at the expense of the Soochow University is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Christopher McLean, a member of the staff of Senator EXON, to participate in a program in Korea sponsored by the A-san Foundation on December 14–21, 1991.

The Committee has determined that participation by Mr. McLean in this program, at the expense of A-san Foundation is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for James Sakai, a member of the staff of Senator AKAKA, to participate in a program in Taiwan sponsored by the Soochow University on January 12–19, 1991.

The committee determined that participation by Mr. Sakai in this program, at the expense of the Soochow University is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Tim Carlsgaard, a member of the staff of Senator DECONCINI, to participate in a program in Australia, sponsored by the American Council for Young Political Leaders [ACYPL], from April 23 to May 11, 1990.

The committee has determined that participation by Mr. Carlsgaard in this program, at the expense of ACYPL, was in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Trina Vargo, a member of the staff of Senator KENNEDY, to participate in a program in Ireland, sponsored by the United States Senate and the Government of Ireland, from June 2–5, 1991.

The committee has determined that participation by Ms. Vargo in this program, at the expense of the United States Senate and the Government of Ireland, was in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Suzanne Hildick, a member of the staff of Senator HATFIELD, to participate in a program in Korea sponsored by the A-san Foundation on December 14–21, 1991.

The committee has determined that participation by Ms. Hildick in this program, at the expense of A-san Foundation is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Mary A. Irace, a member of the staff of Senator SARBANES, to participate in a program in Mexico sponsored by the Mexican Business Coordinating Council, Consejo Coordinator Empresarial [CCE] on December 8–11, 1991.

The committee has determined that participation by Ms. Irace in this program, at the expense of CCE is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Dan Stanley, a member of the staff of Senator DOLE, to participate in a program in the Republic of China sponsored by the Soochow University on January 8–14, 1991.

The committee has determined that participation by Mr. Stanley in this program, at the expense of the Soochow University is in the interest of the Senate and the United States.●

HAROLD OHLENDORF

● Mr. PRYOR. Mr. President, recently a Rhodes College (Memphis) publication contained a feature article on a man who has been a visionary in his community. That man is Harold Ohlendorf of Osceola, AR.

In today's society of mass communication, where the trivial or the sensational garners the most attention, we infrequently hear about the contributions that many unassuming loyal Americans make to society and their fellow citizens.

Harold Ohlendorf is just such an individual. He has been a pillar of his community, respected by all who know him, and a man that I am proud to call my friend.

I ask that the feature article from the Rhodes College publication be printed in the RECORD at this point.

The material follows:

IN LAND-OF-OPPORTUNITY ARKANSAS OHLENDORF HAS BROUGHT INDUSTRY KNOCKING

(By Helen Watkins Norman)

Osceola, Ark., is named for a Seminole Indian chief. But the town's genesis as a bustling manufacturing center is the reflection of another leader, a chieftain of change with enough civic boosterism feathers in his cap to rival any Indian headdress.

Rhodes alumnus Harold Ohlendorf ('31), a farmer who'd rather talk industrial development than crops, has spent his adult life altering the mind-set and landscape of Eastern Arkansas. More industry, better schools, improved libraries and ample medical facilities are all part of Ohlendorf's legacy for his

adopted state of Arkansas. But nowhere is that more true than in Ohlendorf's hometown of Osceola, 50 miles north of Memphis.

Osceola's economic horizon, once as flat as its cotton fields, is today abloom with industry that Ohlendorf helped secure: a Fruit of the Loom knitwear plant, a Kagan Dixon wire manufacturing facility, an American Greetings plant covering more than 2.5 million square feet. All in all, Osceola, population 9,000, has attracted 11 major industries—employing more than 5,000 workers—since Ohlendorf and a handful of city leaders decided that an influx of manufacturing was needed to diversify their heavily agricultural hometown.

Though he's quick to credit others and unreceptive to the gush of praise, Ohlendorf is, as Osceola's current Chamber of Commerce president Reed Fergus noted, "largely responsible" for the success and progressive nature of the city. "Mr. Ohlendorf has meant more to the city of Osceola than any other person I know."

Ohlendorf would no doubt shrug off such statements as hyperbole. But the evidence is convincing. In the center of town stands the Ohlendorf Civic Center. A few blocks away, at the Mississippi County Community College's satellite branch in Osceola, is the Ohlendorf Center for Economic Development. The First National Bank, on whose board he has served for more than 50 years and which he continues to lead as chairman, occupies another corner of the commercial district. And throughout the town and its outskirts rise manufacturing plants, school facilities and libraries which Ohlendorf had a hand in recruiting or improving.

His office, in an assuming flat brick building overlooking Ohlendorf Farms, overflows with plaques and mementoes from the community and corporate America, as well as a tribute to "the world's greatest grandfather," from his grandchildren. His portfolio of civic and professional achievements runs longer than a school board meeting (he served 36 years on Osceola's school district board). And his schedule of work and volunteer commitments, even as he enters his eighth decade, stays more tightly packed than a bale of his favorite fiber.

He's held appointments under six governors, serving on the Arkansas Industrial Development Commission since 1971, longer than anyone in the commission's history.

His appointment by Arkansas Gov. Orval Faubus to help establish the Arkansas Children's Colony, a facility for mentally retarded children, is the one that he talks about the most tenderly. "Arkansas was one of two states in the nation that did not have facilities for mentally retarded children. The legislature passed a law when Faubus was governor to establish the Children's Colony for these mentally handicapped young people, and Faubus asked me to serve on the original board."

With tears in his eyes, Ohlendorf described the inadequate options that previously confronted families with mentally retarded children, the heartbreak he saw in their faces. The facility that he and other members of the commission helped established was a complex of cottages where these children were taught how to survive in the outside world. It turned out to be a model facility for the rest of the nation. "The greatest satisfaction comes when you feel like you've done something for these kids," said Ohlendorf.

Ohlendorf has also "done" for other segments of the population, and his contributions have been cited by many. The Arkansas Farm Bureau, which he headed for 17 years, has honored him with a state-wide celebration of his contributions. A consortium of county and city organizations which cited his contributions to the development of industry and improvement of health care and education in the area named Feb. 4, 1972, as Ohlendorf Appreciation Day. Both Rhodes and the University of Arkansas have conferred on him honorary degrees. And the Arkansas Library Association named him Trustee of the Year in 1990.

As appreciative as citizens are today, however, it wasn't always so, at least not among his fellow farmers. A minor rift between Ohlendorf and the agricultural fraternity occurred briefly in the early 1950s when Ohlendorf—convinced that farming would not sustain the area's economy for the long run—persuaded city fathers that new industries were needed to boost Osceola's economic base.

"I took quite a lot of heat from the farmers," said Ohlendorf, whose current farm operation consists of about 10,000 acres of cotton, soybean and wheat. "[The farmers] were saying, 'you're going to take the labor off our farms . . . you're going to bring in industry and we're going to be without labor."

But Ohlendorf thought differently. The cotton picking machine was at the time in the early stages of development. International Harvester had, in fact, been doing test-research on some of its models at Ohlendorf Farms. And while many farmers disputed the machines' potential, Ohlendorf presciently regarded the mechanical cotton picker as the harbinger of a new age for his community. He foresaw the impact that the mechanical cotton picker would have on the business of farming and on the elimination of untold numbers of cotton picking jobs.

New industry, Ohlendorf reasoned, could fill the job vacuum created by a mechanical cotton picker. "We had to have something here for people to do," explained Ohlendorf, who had already seen many young people leave Osceola after World War II in search of jobs. What's more, he believed that an influx of industry would be beneficial to the farm families who needed to supplement their farm incomes with a second job.

Ohlendorf has been an effective advocate of change and of the necessity of learning to live with it. That's a lesson ingrained in him since childhood.

Born in Freeburg, Ill., Ohlendorf was the only son of Diedrich and Anna Schmitz Ohlendorf, a couple with German roots and modest means. When Ohlendorf was a young boy his father farmed in Illinois, but the family moved to Osceola when he was three and his father farmed on rented land. When World War I came along, however, his father was drafted and the family moved back to Illinois.

After the war the Ohlendorfs lived in Illinois and Indiana, where his father tried his hand at a number of different businesses: a dairy farm, a car dealership, a flour mill. "He was involved in several businesses. That's why we moved quite a lot. I went to 13 different schools before graduating from high school."

Not only did the young Harold adapt to frequent changes in venue, he learned to accept whatever odd job needed to be done to bolster the family budget.

As a boy he had a paper route in Vincennes, Ind. along the Wabash River, delivering his goods on foot with a "20 below 0" wind at his back. "I knew that was one business I didn't want to do again," he laughs. Some of the other jobs weren't much better: milking cows and delivering the milk in an old Model T for his father's dairy, cleaning the underbellies of cars with a wire brush in 100 degree heat for the family auto shop, peddling eggs for his mother who raised chickens in the backyard.

The last move of his high school years took the family to the boom state, Florida, where his father operated a small orange grove. Finally in the mid-'20s, his parents moved back to Osceola and Harold joined them after graduating from high school in Tampa.

His father bought a small parcel of land outside Osceola and Harold joined him in the fields. "I was behind a pair of mules most of the time," Ohlendorf says, recalling how tired he'd be at the end of each day. "You sure didn't need to take sleeping pills."

It was a friend of the family in Wilson, Ark. (not far from Osceola)—a Dr. Barksdale—who convinced Ohlendorf to come to Rhodes in 1927. He remained at Rhodes until he graduated in 1931, returning to the farm in the mid-'30s and taking over the family-run operation in the 1940s.

Looking back, Ohlendorf's work innovations while at college should come as no surprise. He helped pay for college with an assortment of odd jobs. He was a waiter in the campus dining hall. He held the local franchise for Davis Clothing Company, selling tailor-made suits to willing clients, few of them his classmates. He worked downtown for the public library and for an office supply firm. He spent his summers traipsing across the South in an old touring car, selling magazine subscriptions, or painting the football bleachers on campus. He even ushered at an auditorium downtown, leading operagoers and other patrons of the arts to their seats. "I got all the culture I needed," said Ohlendorf, who admits he hasn't been to the opera too often since.

Ohlendorf's budding business acumen was evident in his extracurricular affairs as well. His junior year he was business manager for the yearbook. "He was always very competent, more mature than the rest of us," said Paul Tudor Jones '32, who was yearbook editor at the time. Dr. Jones, who went on to become the senior minister at Memphis' large Idlewild Presbyterian Church, recalls Ohlendorf as a very effective business manager who always dressed in a jacket and tie.

After college and Dr. Jones's marriage to fellow Rhodes student Anna Hudson "T" Jones, the couple sometimes ran into Ohledorf. "'T' would always say," Dr. Jones laughed, "if she'd known then (back in college) the way things were going to turn our—with my becoming a minister and Harold a successful business tycoon—she certainly would have married the business manager of the yearbook rather than its editor."

Ohlendorf acquired a persistent nickname in college befitting his later advocacy of industry. It was "Rascob," the name of a noted industrialist who was, in the late 1920s, campaign manager for Franklin Delano Roosevelt in his bid for the presidency.

Ohlendorf began to describe how he earned the name "Rascob," But his attention was momentarily diverted by the view of a Barnum and Bailey Circus train barreling down the railroad tracks outside his window (trains hold a special interest for Ohlendorf who served many years on the Frisco Railroad board; an authentic Frisco train caboose currently stands on an abbreviated track, just yards from his office). "I was campaign manager for whoever it was who was running for student body president. People related the two campaigns. And the name 'Rascob' has stuck with me since," he said.

Rascob isn't the only aspect of Rhodes that followed him beyond Memphis. When Ohlendorf was married in 1934 to Frances Jones, college president Charles E. Diehl officiated at the ceremony. Frances died in 1980, and Ohlendorf has since remarried. But he and his second wife, Elvira "Bruce" Kincaid—an active townswoman and busy partner in Ohlendorf Farms—continue to maintain their Rhodes ties. The couple are sustaining members of the Charles E. Diehl Society and they visit the campus periodically. Most recently they attended Ohlendorf's 60th class reunion festivities in October. Ohlendorf also serves Rhodes as an honorary trustee.

Though his ties to Rhodes remain as solid as the campus's giant oaks, it is the dark, fertile Osceola soil where Ohlendorf's roots penetrate the deepest. In the words of Dick Prewitt, the mayor of Osceola for 20 years: "Every community needs a Harold Ohlendorf."•

TREE-MENDOUS MARYLAND

• Mr. SARBANES. Mr. President, I want to bring to the attention of my colleagues in the U.S. Senate the record of "TREE-MENDOUS MARYLAND," a 2-year-old program in my home State of Maryland. This effort was started by Governor Schaefer and the Department of Natural Resources and has a 2-year budget of $250,000. The program has raised more than $225,000 and has actually planted over 2,500,000 trees and seedlings in our State. This contrasts with the National Tree Trust, established by President Bush to reforest the Nation with 1 billion trees. Recent press reports indicate the trust has spent $1.23 million in salaries and other administrative costs, and just $350,000 in grants for groups to plant trees.

Working with the Forestry Division of the Department of Natural Resources, Wally Orlinsky, special assistant to Department Secretary Dr. Torrey Brown, acts as the program's executive director. He has modeled part of his program after the Jewish National Fund. It gives Marylanders a chance to buy trees in honor or memory of friends and loved ones. In 2 years, with no advertising, he has already had some 12,000 people purchase trees.

Marshalling departmental resources, the forestry division now gives courses to people on tree planting, creating a cadre of some 400 tree planting supervisors to date. This program is now expanding to provide instruction in tree care and maintenance, which will lead to "Maryland's Green Gorillas," an army of volunteer coordinators who will spearhead expanding efforts at tree planting, care, and maintenance.

The TREE-MENDOUS Program has allowed Marylanders to purchase trees for parks and for public open space. Maryland corporations and businesses are now involved in planting the State highway clover leaves with trees, and through the newly created Clover Leaf Foundation, flowers, as well. IKEA, Lever Brothers, Winchester Homes, Pepco, James Cassidy, Inc., Foxleigh Enterprises, Langenfelder and Sons, and Westvaco are some of the companies involved to date.

The majority of trees are seedlings. Plantings included efforts like that of the Annapolis Christian Day School plant-a-thon, whereby 600 children spent a day planting 14,000 seedlings on a multiacre tract of weeded highway land.

This past spring, April was declared "TREE-MENDOUS MONTH" in Maryland; and working with the Governor's challenge to county governments, the TREE-MENDOUS program planted 1,500,000 trees and seedlings around the State. Over 35,000 volunteers joined in over 560 projects to accomplish this task.

On December 6, the TREE-MENDOUS MARYLAND Program will be honored by "Keep America Beautiful" as the second best State/Federal environment stewardship program in the Nation.

In Maryland, our Governor and our citizens recognize our special stewardship of the Chesapeake Bay and our responsibility for our own environment. Mr. Orlinsky and his TREE-MENDOUS MARYLAND Program have harnessed these beliefs and transformed them into an active and successful endeavor to get trees planted. Maryland's program is an excellent example of how people, business, and government working together can succeed in the improvement of our lives.•

FILING OF REPORTED LEGISLATIVE AND EXECUTIVE CALENDAR BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate committees may file reported legislative and executive calendar business on Wednesday, December 11, from 11 a.m. until 2 p.m.

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

ORDERS FOR TUESDAY, JANUARY 3, 1992, AND TUESDAY JANUARY 21, 1992

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate convenes on January 3, 1992, that the Journal of proceedings be approved to date; that the call of the calendar be waived; that no motions or resolutions come over under the rule, and that the time until 12 noon be divided between the two leaders, or their designees; that following the adjournment sine die of the first session and the convening of the second session at 12 noon, the Journal of proceedings be deemed approved to date; that the morning hour be deemed expired; and that the Senate stand in recess, according to the provisions of House Concurrent Resolution 260 until 11:30 a.m. on Tuesday, January 21, 1991.

I further ask unanimous consent that when the Senate reconvenes on January 21, 1992, following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; and that there be a period for the transaction of morning business not to extend beyond 12:30 p.m.; that the Senate stand in recess from 12:30 p.m. until 2:15 p.m., and that at 2:15 p.m., the Senate proceed to vote on the motion to invoke cloture on the motion to proceed to the consideration of S. 2, the education bill, with the live quorum, pursuant to rule XXII being waived.

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

FIRST SESSION OF THE 102D CONGRESS

Mr. MITCHELL. Mr. President, we have completed the first session of the 102d Congress. The possibility of further action in this session remains open, but at this point it is appropriate to assess some of the actions taken to date.

No baseball game is ever over after four innings, and no football game is over at half time, so there can be no full, fair, and final evaluation of a Congress at the end of the first session. Such an evaluation can occur only after completion of the second and final session, and that will occur late next year. But we do know that this Senate in this first session of this Congress acted in important and substantial ways on many issues relevant to the concerns of Americans.

Much remains to be done, but I would like to look back briefly and suggest some of the areas where I believe significant action has occurred.

We began the year in January on an action of constitutional significance. Following a lengthy period of ambivalence and national uncertainty, the President decided in January to submit to the Congress the question of whether the Nation should be committed to war. There was a lengthy, informative debate. The President's view prevailed and a successful effort resulted in the Persian Gulf war. The constitutional significance lies in the submission by the President to the authority of the Congress with respect to that power.

Following the conflict, we took action on what I believe to be a very significant and comprehensive reform and updating of veterans legislation. It was not controversial, so it did not receive much attention, controversy being the basis by which the newsworthiness of much of what we do is judged. But I submit that little we have done in this year or perhaps in many years will have as beneficial and long lasting an effect for millions of American veter-

ans and their families than will that comprehensive legislation enacted earlier this year in the aftermath of the Persian Gulf war.

Just recently, after months of delay caused by the President's opposition, unemployment insurance was extended for millions of Americans. It was later than we had hoped. We suffered temporary setbacks along the way as the President ignored our first bill and vetoed our second bill, but ultimately the President came to see the need for action to provide extended insurance to the millions of American families who were in desperate need and anxiety, and that provision was made.

We passed the civil rights bill. Again, it was delayed because of Presidential opposition. Again, ultimately the President reversed his position, and I commend him for those reversals because the last position taken in both the unemployment and civil rights cases was the correct one.

I am disappointed that we did not act finally on crime legislation. It was a good bill. We were prevented from proceeding to it by the vote that occurred today. I believe we will be back to it, and I believe we will enact comprehensive legislation which will deal with violent crime where it occurs and where it is prosecuted and where it is punished, and that is at the State and local level.

There has developed in recent years as a result of national political rhetoric the myth that the problem of violent crime in America can be solved by dealing with Federal criminal law.

Mr. President, I have been a prosecutor at the State level. I have been a prosecutor at the Federal level. I can say with experience and assurance that the overwhelming majority of violent crimes that occur in this country, the murders, the rapes, the robberies, the assaults, the overwhelming majority which occur at the State and local level, within the jurisdiction of State and local authorities, are prosecuted by State and local officials and punished by State and local officials.

The bill we presented today would have provided $3.2 billion to State and local officials and law enforcement offices to beef up their actions, in contrast to the President's bill, which had nothing for them. If I may extend the analogy, State and local officials are in the front line of the war against crime. Our bill would have helped them. The President's bill would have built bunkers in rear echelons, not those in the front lines. We are going to be back to the issue, and I hope we pass it.

We dealt with recapitalization of the bank insurance fund and the Resolution Trust Corporation. We ratified the Conventional Forces in Europe Treaty, a significant act for which I commend the President and the Secretary of State for the negotiation of the treaty, and I commend the Senate for ratifying the treaty.

In some respects, it has been overtaken by events. But it represents a step forward in reducing the level of arms in the armies facing each other for so long in Europe, and therefore reduced the risk of conflict in that region.

We have a lot to do when we come back next year. First and foremost must be attention to the problems of our economy—the low rate of economic growth, the low rate of job creation. We are going to have hearings in the next few weeks, and if action can be taken this year, I hope it will be. It does not now appear that will be possible.

But we have to do something to create jobs and economic growth in America for Americans. That means, first and foremost, cutting the taxes of the middle class. No more of the trickle down theory of economics, which says that the only way to help people in the middle class is first to give huge tax breaks to those at the very top of the income scale, and somehow then the benefits will trickle down to the rest of us.

The American people have been trickled on long enough. We need a middle-class tax cut, for families making $30,000, $40,000, $50,000 a year, where both husband and wife work. And that is what we are going to try to do.

We are going to try to provide incentives for first-time home buyers to try to spur home construction in our society. We need to address the credit crunch. We need to reform our systems of education and health care—an education system which is not teaching, a health care system which is not curing—and we have to reduce costs in health care, as we can with comprehensive health care reform.

We will deal early next year with the education bill. It will be the first bill that we consider when we return on January 21. We will then move to cable television legislation. I hope to give a high priority to comprehensive energy legislation early next year.

We have done a good bit. We have much more to do. We must meet our obligation to the American people, and we must address those issues that are relevant to their concerns.

In the next session of this Congress, the agenda of the Congress must be the agenda of American families. In that way we will not only act in the manner we are required to act to meet our responsibilities, we will increase the esteem in which the institution of Congress is held by the American people, and we will further increase that esteem by passing, finally, campaign finance reform legislation, now passed by both Houses, awaiting final action.

Mr. President, I want to thank all Senators for their courtesy to me, their patience and cooperation in what has been a long, at times difficult, but ultimately productive session. The Secretary of the Senate and his staff have been of immense help to me and all Senators; the Sergeant at Arms and her staff. I am very proud of the fact I have appointed the first woman Sergeant at Arms in our Senate's history. Martha Pope, in that position, has more than justified the confidence I had when I appointed her by doing a truly superb job.

The Secretary for the majority and the Secretary for the minority and their staffs in the Cloakroom have done an outstanding job, as have the floor staffs for both leaders.

Lula, Charles, Marty, Howard, and Liz serve as invaluable aides to the leadership on both sides. The Democratic Policy Committee staff has provided guidance and information to Senators. All of those who work to make the operation of the Senate possible—the restaurant staff; the elevator operators; the custodial services; the pages, who we hope have learned something in their experience; the entire staff of the Official Reporters of Debates who so patiently record the ever-increasing volume of words uttered by Senators; the new staffers in the closed captioning office, all of them deserve our gratitude.

I want to reserve special thanks to two people who have made this an especially important and meaningful effort this year: Senator WENDELL FORD, the Democratic whip, my friend and colleague, has done so much to be of assistance to me personally and to all Democratic Senators, indeed to all Senators, widely respected by Members of the Senate on both sides of the aisle, extraordinarily effective in moving legislation forward, and unique among us in the Senate, and not one to seek headlines or time on camera. I am very grateful to Senator FORD for his helpfulness and his friendship.

I want also, before I thank Senator DOLE, to thank my own staff, John Hilley, the chief of staff; Pat Sarcone, my secretary, and the many others who have been extremely helpful; members of my legislative staff, who have been very helpful, as well.

And, as inevitable when I begin to name names, I forget some. I inadvertently missed Art, on the floor staff, and I thank Art as well for his assistance.

Finally, Mr. President, I am very grateful to our Republican colleagues, and especially to their leader and my friend, Senator DOLE. Senator DOLE and I disagree often on issues, publicly and privately. We debate them openly and vigorously. But we have never had a personal disagreement. We have come to be personal friends, as well as Senators serving in a close professional relationship. I trust him implicitly. I hope he feels the same way about me.

In an institution in which the rights of the minority are not just protected, the rules are actually quite solicitous

of the rights of minorities, down to a minority of one; it takes cooperation to move forward.

It takes a unique blend of cooperation and competition to move the Senate forward and produce the best policy for the Nation. We do not always succeed. But it would not have been possible to accomplish any of the things I mentioned without Senator DOLE's leadership and his cooperation, where he deemed it appropriate. So I am very grateful to him.

I hope all concerned, Senator DOLE, the Republican Senators, Senator FORD, and the other Democratic Senators, the staff, and others, have a very happy Thanksgiving with their families, a good and productive break, and that we will all come back here next year renewed and ready to act in the interest of the people in whose behalf we act.

It is, for each of us Members of the Senate, a great honor to serve in the U.S. Senate, to represent our fellow citizens in a representative democracy; and our objective, our responsibility, our overriding concern must be to improve the well-being of the people we represent, and to do it in a fair and responsible manner. To that task we all commit ourselves when we return, and we express our gratitude for the honor done us by permitting us to serve here, and we hope there will be good by what we accomplish here.

THANKS TO THE MAJORITY LEADER AND STAFF

Mr. FORD. If the Senator will yield me 30 seconds. Let me thank the distinguished majority leader for his kind words. I appreciate them very much.

I want to thank him for his patience with me, his tolerance, as I worked my way through the first session in this position. The tolerance of the floor staff has been meaningful to me, Mr. Leader, and I hope that with this experience I can be more helpful to you and our colleagues next year, and that we do those things in the second session that will be so meaningful to those people we represent.

I am grateful to you, and I thank you sincerely.

Mr. MITCHELL. Mr. President, I thank my colleague. I am advised that the House has not yet acted finally on the adjournment resolution, so we must await that action. While we do, 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. MICHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADJOURNMENT UNTIL JANUARY 3, 1992, AT 11:55 A.M.

Mr. MITCHELL. Mr. President, if there are no Senators desiring to speak, I now ask unanimous consent that the Senate stand adjourned pursuant to the provisions of House Concurrent Resolution 260, until 11:55 a.m. Friday, January 3, 1992.

There being no objection, the Senate, pursuant to the provisions of House Concurrent Resolution 260, at 7:05 p.m., adjourned until Friday, January 3, 1992, at 11:55 a.m.

NOMINATIONS

Executive nominations received by the Senate November 27, 1991:

THE JUDICIARY

SONIA SOTOMAYOR, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK VICE JOHN M. WALKER, JR., ELEVATED.

DAVID G. TRAGER, OF NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK VICE A NEW POSITION CREATED BY PUBLIC LAW 101-650, APPROVED DECEMBER 1, 1990.

CONFIRMATIONS

EXECUTIVE NOMINATIONS CONFIRMED BY THE SENATE NOVEMBER 27, 1991:

DEPARTMENT OF STATE

ROBERT STEPHEN PASTORINO, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DOMINICAN REPUBLIC.

CURTIS WARREN KAMMAN, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CHILE.

GEORGE FLEMING JONES, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CO-OPERATIVE REPUBLIC OF GUYANA.

WILLIAM EDWIN RYERSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ALBANIA.

JOHN R. DAVIS, JR., OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ROMANIA.

FREDERICK VREELAND, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF MOROCCO.

JOHN HUBERT KELLY, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF FINLAND.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

JOSE E. MARTINEZ, OF TEXAS, TO BE DIRECTOR OF THE TRADE AND DEVELOPMENT PROGRAM.

INTER-AMERICAN FOUNDATION

WILLIAM KANE REILLY, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING SEPTEMBER 20, 1991.

EXECUTIVE OFFICE OF THE PRESIDENT

CLAIR W. BURGENER, OF CALIFORNIA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM EXPIRING OCTOBER 27, 1991.

PANAMA CANAL COMMISSION

WILLIAM CARL, OF TEXAS, TO BE A MEMBER OF THE BOARD OF THE PANAMA CANAL COMMISSION.

JOHN J. DANILOVICH, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF THE PANAMA CANAL COMMISSION.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

JOHN W. CRAWFORD, JR., OF MARYLAND, TO BE A MEMBER OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD FOR A TERM EXPIRING OCTOBER 18, 1996.

DEPARTMENT OF ENERGY

LEO P. DUFFY, OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT).

DEPARTMENT OF DEFENSE

DONALD C. FRASER, OF MASSACHUSETTS, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION.

VICTOR H. REIS, OF THE DISTRICT OF COLUMBIA, TO BE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

JAMES RODERICK LILLEY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

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.

THE JUDICIARY

ALICE M. BATCHELDER, OF OHIO, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

HAROLD R. DEMOSS, JR., OF TEXAS, TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT.

AIR FORCE

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE OF BRIGADIER GENERAL UNDER THE PROVISIONS OF SECTION 624, TITLE 10 OF THE UNITED STATES CODE:

To be brigadier general

COL. GEORGE P. COLE, JR. [redacted] REGULAR AIR FORCE.

COL. ELDON W. JOERSZ [redacted] REGULAR AIR FORCE.

ARMY

THE U.S. ARMY NATIONAL GUARD OFFICER NAMED HEREIN FOR APPOINTMENT IN THE RESERVE OF THE ARMY OF THE UNITED STATES IN THE GRADE INDICATED BELOW, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3385 AND 3392:

To be major general

BRIG. GEN. NATHANIEL H. ROBB, [redacted]

AIR FORCE

AIR FORCE NOMINATIONS BEGINNING CLIFTON D. DANIEL, AND ENDING JACK H. MORGAN. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

AIR FORCE NOMINATIONS BEGINNING SCOTOLIFF HECTOR A. ARROYO, AND ENDING GUNTHER A. MUELLER. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST).

AIR FORCE NOMINATIONS BEGINNING MAJ. MICHAEL T. ALLEN, [redacted] AND ENDING MAJ. EARL R. HARRISON, JR., [redacted] (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

AIR FORCE NOMINATIONS BEGINNING RONALD M. ADAMS, AND ENDING WILBUR T. WORKMAN. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

ARMY

ARMY NOMINATIONS BEGINNING CHARLES G. ABBOTT, AND ENDING DONALD J. COPLEY. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

ARMY NOMINATIONS BEGINNING JAMES D. HALLUMS, AND ENDING JOHN H. GRUBBS. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

ARMY NOMINATIONS BEGINNING BRUCE A. ADAMS, AND ENDING MARK E. ZIRKELBACH. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

NAVY

NAVY NOMINATIONS BEGINNING THOMAS H. ADAIR, AND ENDING PAUL A. YETMAR. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF OCTOBER 31, 1991, FOR COMPLETE LIST.)

NAVY NOMINATIONS BEGINNING KEVIN T. AANESTAD, AND ENDING KIMBERLY A. ZYCH. (SEE EXECUTIVE JOURNAL PROCEEDINGS OF NOVEMBER 15, 1991, FOR COMPLETE LIST.)

FARM CREDIT ADMINISTRATION

GARY C. BYRNE, OF CALIFORNIA, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD FOR THE TERM EXPIRING MAY 21, 1996.

DEPARTMENT OF AGRICULTURE

CHARLES R. HILTY, OF OHIO, TO BE AN ASSISTANT SECRETARY OF AGRICULTURE.

NATIONAL MEDIATION BOARD

PATRICK J. CLEARY, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR THE TERM EXPIRING JULY 1, 1994.

NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT FOR THE TERMS INDICATED:

FOR A TERM EXPIRING SEPTEMBER 30, 1992: DAVID ALAN HESLOP, OF CALIFORNIA.

FOR A TERM EXPIRING SEPTEMBER 30, 1993: KENNETH H. BASTIAN, JR., OF TEXAS.

FOR A TERM EXPIRING SEPTEMBER 30, 1994: MARJORIE ARSHT, OF TEXAS.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

BARBARA J.H. TAYLOR, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1995.

JAMES E. LYONS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1994.

NATIONAL SCIENCE FOUNDATION

IAN M. ROSS, OF NEW JERSEY, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION, FOR THE REMAINDER OF THE TERM EXPIRING MAY 10, 1992.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

THE FOLLOWING NAMED PERSONS TO BE MEMBERS OF THE NATIONAL MUSEUM SERVICES BOARD FOR THE TERMS INDICATED:

FOR A TERM EXPIRING DECEMBER 6, 1993: RUTH K. WATANABE, OF CALIFORNIA.

FOR A TERM EXPIRING DECEMBER 6, 1994: EUNICE B. WHITTLESEY, OF NEW YORK.

FOR A TERM EXPIRING DECEMBER 6, 1995: LISA A. HEMBRY, OF TEXAS.

NATIONAL COUNCIL ON DISABILITY

ANNE C. SEGGERMAN, OF CONNECTICUT, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1993.

MARY MATTHEWS RAETHER, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1994.

ANTHONY HURLBUTT FLACK, OF CONNECTICUT, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1994.