SENATE—*Wednesday, March 6, 1991*

(Legislative day of Wednesday, February 6, 1991)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led today by a guest chaplain, Dr. McKinley Young, pastor of the Big Bethel A.M.E. Church, Atlanta, GA. Dr. Young, please.

PRAYER

The Reverend McKinley Young, Big Bethel African Methodist Episcopal Church, Atlanta, GA, offered the following prayer:

Let us pray:

Eternal God, our Creator and Redeemer, bless these United States of America that we may be a blessing to the world; grant that our ideals and aspirations may be consistent with Your will and help us to see ourselves as others see us. Keep us from hypocrisy in action or reflection. Grant that we, gracious God, may know that You are the very foundation of peace and justice and enable and empower us to establish sound and honest government with just laws, excellent education for every student, a clean and vigilant press, simplicity and justice in our relations with one another and, above all, a spirit of service which will abolish pride of place and inequality of opportunity so that the least, the lost, and the last will be able to help us sing "God Bless America." Through Jesus Christ our Lord we pray. Amen.

RESERVATION OF LEADERSHIP TIME

The PRESIDENT pro tempore. Under the previous order, the time of the two leaders will be reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. There will be a period for the transaction of morning business not to extend beyond the hour of 10:10 a.m. today, with Senator PRYOR to be recognized for not to exceed 15 minutes and Senator GORE to be recognized for not to exceed 20 minutes, and with Senators permitted to speak therein.

Mr. FOWLER addressed the Chair.

The PRESIDENT pro tempore. The Senator from Georgia.

Mr. FOWLER. I ask unanimous consent to speak out of order for no more than 1½ minutes.

The PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

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

The PRESIDENT pro tempore. If the Senator will allow me, there is no need to request consent to speak out of order in the period for morning business. Senators are permitted to speak therein. They may speak on any subject, and the Chair wants to correct the RECORD from the Chair's standpoint.

Mr. FOWLER. I thank the Chair for the consistency of his instruction and the consistency of his excellence in reminding this body of our rules, and I am very grateful.

The PRESIDENT pro tempore. The Chair's instruction was to himself.

EXEMPLARY CHRISTIAN SERVICE

Mr. FOWLER. Mr. President, we have just heard a prayer from Dr. McKinley Young of the Big Bethel A.M.E. Baptist Church in my hometown of Atlanta, GA. I am very pleased not only to be here but to thank my great friend for the exemplary Christian service that he has represented over many a year to the people of my city and the people of my State.

His service is actually reflected in the quality of this prayer. He has stood for a ministry of the gospel that ministers to all people regardless of race, regardless of religion, Protestant differences, and regardless of economic status. It is the highest calling of the Gospel, at least the way I was taught it, and continue to be taught it by Dr. Young, that unless we minister to the least of these our brethren, then the work of our Lord and the work of the Gospel is never finished.

The ministry from his church extends not only throughout our State but throughout the world. I tell my colleagues that Dr. Young has been in the forefront of the leadership in assuring that justice extends to our brethren throughout the world, specifically to our brethren in South Africa.

I am grateful that he has joined the long line of guest ministers as an inspiration and a reminder that service under the dictates of our faith is the real reason for our being.

I thank the Chair and I thank my colleagues for allowing me to speak.

The PRESIDENT pro tempore. The Senator from Oklahoma is recognized.

Mr. NICKLES. I thank the Chair.

(The remarks of Mr. NICKLES pertaining to the introduction of S. 566 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDENT pro tempore. The Senator from Tennessee [Mr. GORE] is recognized for not to exceed 20 minutes.

A NATION UNITED

Mr. GORE. Mr. President, with the guns of Desert Storm now silent and our soldiers preparing for peace and long-awaited homecomings, we are a nation united in the pride we feel for what American courage and skill have accomplished and in the outrage we feel toward the vicious brutality of Saddam Hussein. Perhaps most important, we are a nation united in the hope we have for the future.

Together, we applaud the American men and women who served with such distinction and dedication, and we applaud the families and loved ones here at home who summoned great stores of their own perseverance and heart throughout this conflict.

Together, we condemn the brutality that becomes ever clearer to us as each new outrage is exposed; bloody tortures and murders, looting and kidnaping, the savagery of violent nightmares made real.

We share the outrage and the sorrow and the sense of loss felt by every family of those who bravely sacrificed their lives in this war; our sons and brothers and husbands and fathers, our daughters and sisters and wives and mothers.

Together, as a nation, we are now moving toward the future. We are not speaking about what Democrats want or what Republicans want any more than we are speaking about what Tennesseans want or what Texans want. We are a nation in our sharing of both the joys and the sorrows of war, and we are a nation with a new sense of self-confidence, one that for me, as a veteran of Vietnam, carries special significance. We are a nation with a new ability to say to the skeptics we can do it.

Tonight, President Bush will accept the invitation of the Democratic leaders of Congress, Senate Majority Leader GEORGE MITCHELL and House Speaker TOM FOLEY, to address a joint session of Congress. The Nation will honor President Bush's outstanding leadership in Operation Desert Storm, and the Nation will celebrate our victory in Operation Desert Storm.

Just 5 weeks ago, in his State of the Union speech to Congress, President Bush talked about our shared sense of purpose. He did not talk about Republicans gathered "to condemn and repel

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

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lawless aggression." "The world now stands as one," he said. "We are Americans: We have a unique responsibility to do the hard work of freedom."

Congress had at that time just recognized its responsibility in one of the most thoughtful, heartfelt, and solemn debates in the history of Congress. It was a debate of conscience. Every Member of Congress in both Houses struggled with the issues before us, reached deep into his or her heart, and cast what they believed to be the right vote. Politics was not an issue in that debate.

For me, as I know it was for many of my collegues, too, it was an agonizing vote, respectful of the arguments so eloquently expressed by both sides, acknowledging the historic and human consequences of the decision each of us would make. I concluded the use of force was justified as of January 15, but I understood all too clearly why others believed just as strongly in further reliance on sanctions. Their votes were cast with much thought, weighed carefully out of concerns and fears, with our hopes and confidence in what America and the Americans could accomplish. We shared the same goal: Removing Saddam Hussein from Kuwait.

The debate was not over whether force should be used really but what kind and when. Even before that debate had ended we recognized that whatever its outcome we would be united.

As Speaker of the House, TOM FOLEY, said at that time:

> Let us come together after the vote with the notion that we are Americans here, not Democrats and not Republicans, all anxious to do the best for our country without recrimination as to motive, without anything but the solemn cry that on this great decision day we voted as our conscience and judgment told us we should.

Only days later, partisanship on the part of the Republican spokesmen tarnished what had been one of Congress' and our Nation's brightest moments, and to this day it is the Republicans who seem determined to load their big guns with cheap shots.

As Clayton Yeutter approached his new office as chairman of the National Republican Party, his first step left his foot in his mouth. To his credit, he seemed to recognize that he had made a mistake. But at the same time, the Republican Senate Campaign Committee was mailing fundraising letters engaged in partisan name calling, warning their contributors and I quote "appeasement-before-country liberals." Mr. President, appeasement before country? This seems to me to be an intention effort to win votes by poisoning our national politics and by dishonoring a debate in this Chamber that was in our finest traditions. Even now some Republican operatives already are talking openly about manipulating those votes of conscience into political tools for their own gain.

Wars transform Presidents. They also transform nations. Americans are now in no mood to be bystanders to a game of political football with an experience that was intense and powerful for our entire united Nation.

At another time, after another war, it was a Republican Senator who instead of instigating division worked to bring our country together. In the post-World War II world Senator Arthur H. Vandenberg of Michigan helped build the bipartisan support which President Harry Truman needed to ensure the success of the Marshall plan, a Republican working for national unity.

The victory we have secured over communism within the past 2 years came about because our Nation was able to be unified in the aftermath of the great victory of World War II. It came about because Republicans and Democrats came together to help us build a sense of national purpose, to instill a new tone of seriousness in our national politics, a new honesty in our political discourse to address our problems, to look at the future, to chart our course, and to steer by principles that were important to the American people.

During those postwar years another general, very much in the tradition of Norman Schwarzkopf, Gen. Omar Bradley, who was given the cherished title of the GI's general, said in an address to this country, "It is time we steered by the stars and not by the lights of each passing ship."

Mr. President, it is once again time for us to build national unity in the aftermath of a great victory by our Nation.

Senator Vandenberg had that kind of commitment, but that commitment to nations seems instead to have been replaced by some with the worst kind of cynicism.

Did Republicans view their votes as political chips to be cashed in later? Did Republicans consider the arguments in this historic debate like cards in a poker game, playing the hand that offered the largest political payoff? Did Republicans view their votes as part of a pattern of crass political opportunism? Of course not.

None of us who were in this Chamber during that debate could have possibly interpreted the heartfelt opinions and the votes of conscience on the Republican side of the aisle in a political and crass contest. But the partisan attacks by some of their operatives denied the assumption of the same honesty of purpose to others, and poisoned this Nation's ability to construct the kind of national purpose and unity of resolve for which our Nation yearns, especially in the aftermath of this victory.

Shame on those Republican operatives for playing politics with American lives; for the disservice they do to the brave American soldiers who made the ultimate sacrifice for their country. Some of our finest young men and women lost their lives on that battlefield. They did not die as Democrats or Republicans. They died as Americans fighting for a country that was unified here at home as those who had disagreed with the vote to authorize force immediately came together with those who had voted to authorize force, and said we are one Nation. This is beyond politics.

Others were seriously wounded on the battlefield. Was their blood shed so Republicans could have something to talk about in television political commercials?

It was only 2 days ago that I was in my home State of Tennessee for a memorial service paying tribute to one of our fallen heroes, Cpl. James David Tatum, of Riceville. For his family, for his loved ones and friends, this war was not about politics. His sacrifice, his service, his courage, were not about politics. Two others will be buried within the next few days. Their lives, too, were given for our country, not for bumper stickers, or 30-second commercials, dishonoring what this Nation is all about. You simply cannot play politics with American lives. The American people know that even if some Republicans apparently do not.

Democrats, like Republicans, voted their consciences, brought their very best judgment to this debate. Dissent is part of our democracy, part of what makes us strong as a nation. President Bush recognized in his State of the Union Address that "Democracy brings the undeniable value of thoughtful dissent." And President Bush added, "The fact that all voices have the right to speak out is one of the reasons we have been united in purpose and principle for 200 years."

As Commander in Chief of Desert Storm, President Bush provided leadership to our Nation and to the allied coalition with courage and wisdom. He must now provide leadership to those in his own party who are ignoring his words. The candidate who in 1988 let others do his dirty work and pretended not to see is now the President who rallied a nation behind his cause. Few will talk about the wimp factor now, because in the Persian Gulf, George Bush acted with boldness and courage. He should now act with the same boldness and courage to stop those who are trying to earn a fast political buck off of one of our Nation's finest moments and the sacrifice of some of our finest soldiers.

President Bush should send out the word with strength and conviction that he does not condone this kind of politics, that he does notice when his operatives employ it, and he will not tolerate it. He should impose the political discipline some Republicans appear to need to put the national good before the political maneuvering.

President Bush has talked of unity, condemning partisan politics. We take him at his word. Now he must make sure that Republicans who throw around words like "appeasement" before the country not only hear him but understand and heed what he says.

Today we are at one of the best moments our country has had in nearly 2½ decades. We have survived Vietnam, Watergate, hostage taking Iran-Contra. Look at what the American people are telling those who ask. A strong majority believe we are heading in the right direction, that we are in a watershed of self-confidence and hope. We are united now, and as our own history teaches us, we can accomplish great things as a nation when we are united, working together. We must seize this unique moment in our history, not allow it to be debased and tossed away on the fires of political exploitation.

Our optimism does not ignore the very real challenges we face here at home. We drew a line in the sand in Saudi Arabia. Now we must draw a line down every main street in this country and fight a different war against rising health care costs, illiteracy, drugs, crime, pollution, unemployment, and recession. Our optimism and courage will help us win this war, too, not as Democrats or Republicans, but as Americans who recognize that together we can overcome these challenges.

Mr. President, I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). Under the previous order, the Senator from Arkansas is recognized for not to exceed 15 minutes.

JOHNNY COMES MARCHING HOME TO INCREASED PRESCRIPTION DRUG PRICES

Mr. PRYOR. Mr. President, at a time when all Americans have been strongly supporting our men and women who fought in the Persian Gulf, the pharmaceutical manufacturing companies of our country have been intent on proving that profit comes before patriotism on many manufacturers' lists of priorities.

Last year, the drug manufacturers in our country launched an extensive campaign against a simple idea, that the industry should give the same discounts that hospitals and HMO's were receiving to the programs serving the poorest of the Nation's poor—the Medicaid Program. Despite their expensive lobbying war against this legislation to achieve this goal, the Congress passed this initiative, and the Medicaid Program will finally have a bit of a respite from drug price increases that tripled the general inflation rate.

This year, Mr. President, from all reports, the manufacturers seem determined to show their true colors again, and I must say they are not hanging out the yellow ribbons. The ink was not dry on the Medicaid legislation before drug companies decided the best response to this legislation was to begin a massive cost shift to other vulnerable populations, rather than slightly trim excessive profits or cut back on the huge marketing budgets. Almost immediately, companies started raising their prices and pulling longstanding contracts that they had in place with many purchasers of their products.

HMO's and other community hospitals and centers that serve the poor have reported to the Special Committee on Aging that drug companies are eliminating traditional discounts that they have earned in the marketplace.

What is even more shocking is that a number of drug manufacturers have raised prices on the backs of our Nation's soldiers and veterans. Over the past several weeks, as our Nation has struggled with the tremendous costs of the war and the potential need to provide medical care to those coming back from the front, several drug manufacturing companies saw fit to sabotage the drug budgets of the Department of Defense and the Department of Veterans Affairs. What happened, we asked, to that September 17, 1990, statement by Mr. Gerald Mossinghoff, the President of the Pharmaceutical Manufacturers Association, when he appeared before the Senate Committee on Finance to say that it was the drug company's patriotic duty to give the best price to the DOD and to the Department of Veterans Affairs.

Instead of doing their patriotic duty, Mr. President, the drug manufacturers have rewarded the patriotism of our fighting men and women with tremendous, unjustified, unprecedented increases in the price of drugs that will be used in our military facilities and veterans hospitals. There is little question that the drug companies' price increase will require the Department of Veterans Affairs to cut back on other vital health care services desperately needed by our soldiers and our veterans, in order to pay for the additional profits for the drug manufacturers.

Mr. President, here are just a few recent examples of how insensitive this drug manufacturing industry can be. Here is a capsule, if I might say, of the past several weeks of drug price escalation:

DuPont-Merck, a major manufacturer of pain-killing medications—Percocet and Percodan—drugs which would have been used heavily, had there been major war casualties, eliminated all of the lower prices that it gave to the DVA and to the DOD. It will now cost $47.60 for the Departments of Veterans Administration and Defense to buy a bottle of Percodan, where it had previously cost only $5.11, an increase of 832 percent. It will now cost them $43.70 to buy a bottle of Percocet, which had previously cost $1.07.

The Upjohn Co. has notified the Department of Veterans Affairs that they will eliminate their low prices for three very important drugs—Halcion, Xanax, and Ansaid, drugs that are used as tranquilizers and pain relievers. Federal Government expenditures for these drugs are expected to increase substantially in the weeks ahead.

Smith-Kline Beecham, the manufacturer of the widely used antiulcer medication Tagamet, has raised its prices on one strength of the product from $16.92 to $34.29, more than double their prices of a year ago. The Federal Government buys millions of dollars of this product each year for our elderly veterans.

Two manufacturers of insulin, used to control diabetes, have raised their prices to the DOD and DVA almost identically. Eli Lilly raised its price from $4.80 to $6.75 a bottle, and Squibb Novo Nordisk raised its price from $4.60 to $6.50 a bottle. This increase alone will cost the Federal Government $3.5 million this year.

And, Mr. President, the Department of Veterans Affairs just reported to me that this is the tip of the iceberg. They expect more drug companies to cancel their longstanding contracts with the Federal Government, and more prices to increase. In fact, their preliminary estimates are that these price increases will cost the Federal Government as much as $150 million this calendar year alone. That is twice the amount of the estimated first year Federal savings from the new Medicaid rebate law. Far beyond this being unacceptable cost shifting, the industry appears determined to squeeze out even more profits from those who are least able to pay. Needless to say, the major pharmaceutical manufacturers are circumventing the law passed only last October by Congress.

Mr. President, the pharmaceutical drug manufacturing industry is an industry which has perfected the art of profiteering. I have often spoken on this floor about the tremendous drug price inflation that our Nation's poor and elderly have endured in the last 10 years. Between 1980 and 1990, drug prices rose a staggering 152 percent while the general inflation rate was only 58 percent. We thought that the new decade might bring a change of heart from the drug industry, but all indications and especially recent indications in the past several weeks, are that they are gearing up for another decade of recordbreaking profits. As recent as this past December, prescription drug price inflation quadrupled the rate of general inflation, and once again lead all other medical care components of the consumer price index.

This rampant and unprecedented price inflation in 1990 resulted in another banner year for drug company

profits. They made 18 percent profits on sales of $57 billion, which means that the industry made almost $10 billion in profits on the backs of all Americans who need medications. Despite the gloom and doom projected last year by the industry as a result of the rebates that were going into law that they will have to give to Medicaid, industry analysts say that their sales will top $65 billion in 1991, and their profits will increase to 19 percent, an all time record high. It appears that this percent will increase even further at the expense of our Nation's veterans, and our hard-working taxpayers.

Industry profits are so unbelievably high that one analyst, writing in the January 14, 1991, issue of Business Week made the point that you would never know we were in a recession if you had only the pharmaceutical industry's profits by which to judge. He said that the rebates required under the new Medicaid law amounted to nothing more than a minor annoyance for an industry.

To add insult to injury, the industry appears intent to use these enormous profits, unprecedented profits, to add to their already bloated marketing and advertising budgets. An industry that so prides itself on innovation and research can certainly find innovative ways to squander money. Let me give you just two recent examples:

I hold a copy of a book sent to all of our offices by the pharmaceutical manufacturers. It is leather bound. It is all the testimony and all of the letters that were compiled last year opposing the new Medicaid rebate law.

There is not one word in this book, Mr. President, about their unprecedented profits, about their tax write-offs for research and development, about the fact they are a recession-proof industry. Nor is there one word that the pharmaceutical manufacturers in this book tell the American public and our colleagues in the Senate and the House that they are once again gearing up to try to circumvent the system so they can make additional profits.

Another publication has just been born, Mr. President, probably because of the new Medicaid rebate law. It is a slick little journal. It is called the Medical Herald, America's premier national urban medical newspaper, volume 1, No. 1, February 1991, with a picture of Mr. Gerald Mossinghoff, the president of the Pharmaceutical Manufacturers Association on the front page. On page 8, an editorial "New Medicaid Drug Law Draws Fire," is basically against the new Medicaid rebate law. On page 6, an indepth discussion of the new Medicaid rebate law.

But throughout, we find advertisements, publicity from the Pharmaceutical Manufacturers Association.

Mr. President, I am wondering simply if this new newspaper is not only an additional arm and funded by the Pharmaceutical Manufacturers Association.

Mr. President, instead of raising prices on the backs of our Nation's veterans and our soldiers, instead of raising prices to our Nation's poor and elderly, instead of eliminating discounts to the Medicaid Program, instead of making a surgical strike at the heart of our Federal health program, I might suggest today to the drug manufacturers they take up the knife and cut the tremendous fat from their overbloated marketing and advertising budget. Let me suggest they reduce the tremendous amount of money they waste on leather-bound books they send our offices, newspaper and magazine ads, public relations, and all other excessive amounts of extravagancies that are not only unnecessary but eventually drive up the price of drugs on the backs of the poor.

It is getting to the point, Mr. President, where the only ones in our society that can afford outrageously priced medications in America are top executives that run these drug manufacturing companies and their trade association, the Pharmaceutical Manufacturing Association, that I hope is tuned in and listening this morning.

When the average American household, Mr. President, has an annual income of $30,000, the average senior citizen an income of $14,000, the average drug company chief executive in America of the Pharmaceutical Manufacturers Association has an annual income of $2 million a year. That is 64 times the income of the average American, 140 times the income of the average senior citizen who today is being shackled with the outrageous price increases in prescription drugs.

Mr. President, after enactment of the Medicaid rebate legislation last year, I thought the drug manufacturers of America had finally gotten the message that the Congress wanted to get prescription drug prices under control. I thought the manufacturers were finally willing to make their modest contribution to deficit reduction and to say to this Congress, the American taxpayer, and the American public that, "We are going to do our best to keep drug prices low; we will do our best to be a part in cost containment."

Mr. President, I and many other Members of this body thought we could finally trust the drug companies and we could move on then to the other health care issues affecting this Nation. Mr. President, how wrong I was.

The actions of the drug industry over the last several months and weeks have once again poisoned the well. Their inexcusable actions have left all of us with a bitter taste. It has left us shaking our heads, wondering when and how it will all end.

It is time they got the message at long last that price increases and cost shifting to soldiers and veterans, or other areas of the vulnerable population of Americans, is totally unacceptable to the Congress and to the constituents we serve.

In closing, I would like to say that if the drug manufacturers believe that we in the Congress of the United States are going to allow them to get away with this unbridled greed, they are wrong. They are desperately wrong, and they underestimate our wrath.

We will not allow the pharmaceutical manufacturers of this country, who are the robber barons of the American health care system, to continue to rob the poor and the vulnerable to further enrich the drug manufacturers of America.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. SANFORD. I thank the Chair.

(The remarks of Mr. SANFORD pertaining to the introduction of S. 567 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

STATUARY HALL TRIBUTES TO CONGRESSMAN SILVIO O. CONTE

Mr. KENNEDY. Mr. President, last Wednesday, February 27, I was privileged to participate in a moving series of tributes to our late colleague, Silvio Conte, in Statuary Hall of the Capitol. I believe that the ceremonies will be of interest to all of us in Congress who knew and loved this outstanding Member of the House of Representatives, as well as to his legion of friends and admirers in Massachusetts and across the country. I ask unanimous consent that a transcript of the ceremonies may be printed in the RECORD.

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

"THE NAVY HYMN"

(Sung by the United States Navy Band Sea Chanters)

Eternal Father, strong to save,
Whose arm hath bound the restless wave,
Who bidd'st the mighty ocean deep,
Its own appointed limits keep.
Oh hear us when we cry to Thee,
For those in peril on the sea.

Lord, stand beside the men who build,
And give them courage, strength, and skill.
O grant them peace of heart and mind,
And comfort loved ones left behind.
Lord, hear our prayer for all Seabees
Where'er they be, on land or sea.

WELCOMING REMARKS BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. On behalf of Congressman Silvio Conte's family, the United States House of Representatives, and the Massachusetts delegation, I welcome you as we meet in this very historic room to celebrate Sil's life and legacy.

At this time I would call upon the Honorable James Ford, Chaplain of the United States House of Representatives, to deliver the invocation.

CEREMONIES IN TRIBUTE TO THE LATE HONORABLE SILVIO O. CONTE, STATUARY HALL, U.S. CAPITOL, WASHINGTON, DC, WEDNESDAY, FEBRUARY 27, 1991, 12 NOON

INVOCATION BY THE REVEREND JAMES D. FORD, D.D., CHAPLAIN OF THE HOUSE OF REPRESENTATIVES

We are thankful, O gracious God, for all Your blessings upon us and upon all Your creation. We are grateful that You lift up people to whom special tasks are provided and to whom uncommon gifts are given.

Our praise to You, O God, for Your gift of Sil Conte—to his family and those near and dear to him, to our community in the House of Representatives, to the people of his District and to all those that were touched by his work and his life.

As we gather here in this special room, surrounded by the statues of the heroes of this institution, we offer this our prayer, O God, in thanksgiving and praise for him whom we recall this day. May his gift of spirit and his enthusiasm for life, his concern for the needs of people and his friendship with so many, encourage each of us to strive to be the people You would wish us to be and do those good things that bring honor to You, O God, and are of services to the people about us.

May all who knew our friend and colleague and who knew his love of life and his great spiritual faith, find a new spirit within us to "do justice, love mercy and ever walk humbly with You." Amen.

REMARKS BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. All of us in this room knew Sil Conte well, but under very different circumstances. Some of us knew him as a fellow member of Congress, a giant of a legislator, whose antics on the House floor often artfully masked the enormous role he played on the Appropriations Committee and on the floor of the House.

Others here knew him as a fearless hunter and sportsman, only too eager to describe the detail of the day's catch, be it real or exaggerated.

Many others knew Sil as an advocate for energy assistance, for education, for nutrition, and knew very well the enormous debt so many in society owed to this great man.

But everyone in this great hall knew and respected Sil Conte as a friend, a man of skill and courage, a man of compassion and heart. His gifts to all of us are diverse and plentiful. His reputation as a legislator, his genius as a parliamentarian and a strategy man—with high regard he enjoyed a partisan war one day, and a bipartisan compromise the next. But these are the stuff legends are made of.

But more than all of this, Sil Conte was something so significant in our lives that his memory will brace the balance of our lives for years to come.

The next speaker, Congressman Boland, represented the 1st District of Massachusetts for 36 years. He and Sil Conte together represented all of the towns and cities in western Massachusetts. It is my pleasure to introduce the former Congressman from Springfield, the Honorable Edward Boland.

REMARKS BY FORMER CONGRESSMAN EDWARD P. BOLAND

Mr. BOLAND. On this Earth and in this life, there is a time for everything. There is a time for tears, and there is a time for pride. The tears have been washed away by the tremendous outpouring of respect and affection that was so evident in Pittsfield and throughout Sil's beloved Congressional district, in his native State of Massachusetts, and in the Congress of the United States. So today and in the years to come, Silvio Conte's spirit, dedication and accomplishments will be recalled with pride by his family.

While all who are elected to Congress aspire to leave a mark on the institution, not all succeed. Sil Conte was among the few who did succeed. No man or woman who achieved such success that Sil enjoyed, does it alone. All have some source of support from which they draw the strength and the determination to carry on, oftentimes when it is hardest to do.

Corinne and the kids, the family, were that source of strength for Sil.

I wanted to offer a three or four-sentence description of the perfect Congressional spouse, a description that touched on all the necessary attributes: selflessness, patience, good humor, intelligence, dedication, understanding, sacrifice, and all the rest.

Then I suddenly realized that three or four sentences were not needed, when two words, Corinne Conte, were fully expressive of that ideal.

As Sil was the first to admit, he and Corinne were certainly full partners. Sil was a fighter, and, Corinne, he was such a good one, because he always knew that you were in his corner.

Corinne and the kids, Michelle, Sylvia, Gayle, and John, how proud he was of them, and how proud they were of him.

Today, as we reflect on Sil's public service and express in this hallowed place the Nation's pride in him, the family can take comfort and pride in the knowledge that the constancy of their love and support is reflected in everything by which he will always be remembered.

At this time, it is my privilege to introduce Corinne Conte, and two of Sil's children, Michelle Conte Webb and her husband Harry, and Gayle Conte Fowler and her husband Gary. Sil's son and daughter Sylvia could not be with us today, but their families are with us in our thoughts and in our prayers.

INTRODUCTION OF COKIE ROBERTS BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. Cokie Roberts is a daughter of the House of Representatives, having been raised under Congressman Hale Boggs' deft hand and nurtured by Congresswoman Lindy Boggs' warmth and charm.

I give you Cokie Roberts of National Public Radio.

REMARKS OF COKIE ROBERTS

Ms. ROBERTS. It is odd for a member of the media to participate in an event like this. But we in our trade have a special affection for Sil Conte. You will remember him as a gracious and good-humored friend who helped the poor and downtrodden. We will remember him as a good and gracious friend who helped us get our stories on the air and in the paper.

We could convince editors and producers of the most improbable stories, if we promised them that they would have a good Sil Conte bite in them. He would always spice up anything that was happening here, the most arcane of things. He would go to the floor and the debate would get heavy, and he would come out wearing sometimes—actually it was only one time, but it seemed like it was more—the famous pig snout, to hype pork barrel projects. We would all be there, and so would all of the Members—we would rush to the floor, to hear what Sil was going to say this time, and often to participate.

He would start on a litany of abuses, and everybody would start to join in as he was talking. It was especially fun if he had one of his favorite targets, the poor Garrison Diversion, or, worst of all, the federally assisted bee keepers.

A moment after I heard that Sil had died, and I was so sad, and then I got a giggle, thinking at least the bee keepers will be happy. I thought how typical that is of Sil to give me a giggle even now.

Then he had his doggerel we would constantly put on the air. I even did the humiliating thing once of writing my script in doggerel to go with his doggerel.

He was a star in our famous media movie, "The Tapes of Wrath," where he gave the Italian salute on the floor of the House of Representatives.

We all were able to cover at least once the famous Congressional baseball game that Sil loved so much. You know, he joked about it, but he was dead serious about that game. There was no kidding around.

I remember the year that Connie Mack was elected. Sil was so excited. He found out that this was the real Connie Mack, the grandson of Connie Mack, Cornelius McGillicuddy, and, mirabile dictu, he was a Republican of all things.

So he went to him and said, "Baseball—you got to sign up for the baseball team." And then the disgust in his voice as he said to me, "you know what? He plays tennis."

It is odd that we in the press should have such a strong sense of affection for Sil Conte. Of course we loved his humor, and of course we loved the fact that he was a straight source. He told us the truth, and we knew that we could count on it.

But his real talent was things that we tend not to celebrate. We like confrontation, and his talent was compromise. We like to see things falling apart, because that is a good story. His ability was to put things together. It was to legislate. It was to move this institution along and make things happen for people.

Part of it was because he cared so much about people, and part of it was because he cared so much about the institution.

I have noticed in some of the tributes that have been already in the Congressional Record about Sil, and in the eulogy that Speaker O'Neill gave at the funeral, that several people have talked about his sartorial tastes, and mentioned the stripes and plaids together, or my second favorite, his semaphore jacket, signal flags all over it.

But my very favorite jacket of Sil Conte's was a blue blazer, just a plain blue blazer. But on it was the Seal of the House of Representatives.

Once when I was doing a TV profile of him—a tough assignment, I didn't have to write anything—he was wearing that jacket.

I said to him, "Congressman, that jacket makes it look like you are a cheerleader for the House of Representatives. Are you? Are you a cheerleader?"

He thought for a second, and he twinkled, and he said, "I guess I am. I guess I really am. I care about the place."

So I think right now he, and maybe daddy at his side, are cheerleading for you, and, heaven knows, you are going to need it without him.

INTRODUCTION OF CONGRESSMAN ROBERT H. MICHEL

Mr. MOAKLEY. For the past 10 years Bob Michel has served the House and his party as minority leader, and counted as one of his closest friends our friend Sil Conte.

We will hear from the Honorable Robert Michel.

REMARKS OF CONGRESSMAN ROBERT H. MICHEL

Mr. MICHEL. Corinne, Michelle, Mr. Speaker, my colleagues, friends of Sil Conte, as I said at Silvio's funeral, this is a time I had hoped would never come, for like so many of you, I am grieved to lose one of my very dearest friends, and one of yours.

We didn't know one another before he came to the Congress in 1958, but the ever-tightening bond of our friendship through the years has indeed been one of the nicest things that has happened to me.

We had a great deal in common. We were both sons of immigrants. We grew up during the Depression and learned early on what work was all about. We both served overseas during World War II.

We both married Corinnes over 40 years ago, and there are four great kids, as Sil would say, of both marriages.

Sil would be the first to say to always put the emphasis on the family and the church as the really important influences in his life.

He was mighty proud of his Italian heritage. He loved to use the French pronounciation of my name to make the point that even as first generation Americans, it was possible in this country to make it to the top of the political arena.

Yes, Sil was a politician, but in the finest sense of the word. He looked upon the office as an opportunity to serve his fellow man. He was always out there championing the cause of the little fellow, the disabled, and the destitute.

But he also held that old-fashioned view that if you were able-bodied and sound of mind, you had an obligation to work for a living and be a contributor to society. And he himself worked long and hard to become a power in the Congress, but he never let it go to his head.

He had no fancy airs. He was a pretentious man. He really didn't bother to spruce himself up all that much either.

He was something like a comfortable old shoe, I guess, but we all loved him. And there is no question but that his constituents in Pittsfield and western Massachusetts felt the same way, as attested by the thousands who waited in line to pay their respects at Sil's visitation and funeral service.

Of course, his special concern on the Appropriations Committee had to do with health and education issues. He had a particular interest in our medical schools, and long before there were any indications of his being a victim of cancer, he was doing everything he could to expand research activities at the National Institutes of Health to foster prevention and find a cure for all those life-threatening ills that take such a toll.

In Silvio's case, he kept fighting back, never giving up, on the job until just a week before he passed away. And that was his nature. He was a scrapper.

He would want to be remembered that way, even to the display of a bit of temper at times, when there was good reason for it—like his penchant for condemnation of government boondoggles.

Some say, I guess, Sil was flamboyant. I would say that he was just doing what comes naturally, giving vent to his Italian heritage, complete with gestures.

I might even say he was bombastic at times, but it was always for the purpose of dramatizing his point. And, believe me, he could play the House over here like a master.

The truth is that beneath all that bombast was a very sensitive, considerate, caring, and lovable fellow. He loved a good time, enjoyed having fun-loving around him, and, when cranked up, he could be the life of a party. And even though he did not have a voice for singing, he liked those who did, and appreciated good music. That is why I think it is so appropriate to have the Navy Sea Chanters here today.

While his recreational pursuits were officially classed as amateur, I considered him a pro when it came to hunting and fishing. He could put us all to shame with his catch and his limit. Moreover, he loved to serve as the chef when it was time to put it on the table, and, believe me, there was no one better. Oh, how we are going to miss those wild game dinners and fish fries he was responsible for.

He was a great sports fan. He enjoyed chomping on that cigar while playing gin rummy, or as a bridge partner of another of his old buddies, Speaker Tip O'Neill.

When Sil was managing and I was pitching, we had a winning combination that beat the Democrats at baseball 13 years in a row—the only time we were able to do anything politically.

And, for the record, Sil would want the Washington Post's beautiful editorial on his passing amended to read that we played "hard ball, not softball," in those days.

Finally, Sil was a renowned gardner of both vegetables and flowers. We were always comparing notes. This spring I will be babying those amaryllis bulbs he asked me to try, for each new bloom is going to remind me of 32 years of friendship with the greatest of them all.

Corinne, Michelle, and all the members of the family, we tried at the funeral, and again here today in a very simple homespun way, to communicate to you that all of us here so loved Sil Conte deeply, as you do, and we share your sorrow and your profound loss. But I guess we take heart because we have the beautiful memories of having shared our lives with your husband and with your dad.

INTRODUCTION OF SENATOR EDWARD M. KENNEDY BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. As both junior and now the senior Senator from the Commonwealth of Massachusetts for the past 29 years, Senator Ted Kennedy, like his brothers President John Kennedy and Senator Robert Kennedy, was a dear friend of Sil's.

The Honorable Ted Kennedy.

REMARKS OF SENATOR EDWARD M. KENNEDY

Mr. KENNEDY. Corinne, members of the Conte family, friends. To all of us who were privileged to know Silvio personally, and to literally millions of others who knew of him, he was a leader of extraordinary talent and even more extraordinary vitality.

He was a Fourth of July Parade with all the bells and whistles. With his bright smile and booming laugh, he roared down the highway of life like the famous car he drove—fire-engine red, convertible with the top down, his personality as colorful as the fall foliage in his Berkshires.

That was Sil Conte. And for 32 years, the citizens of the First District of Massachusetts were blessed with one of the finest legislators and most beloved Members of Congress of his time.

The other day, I received a letter from one of his constituents, Sandy Thomas, of Greenfield, Massachusetts, and I'd like to read a few lines: "Dear Senator Kennedy. Like many others, I have been moved to tears and feeling grieved at the loss of this remarkable and genuine man. He was kind, gentle and good. Mr. Conte helped me try to obtain educational help for my child when I approached him 2 years ago. He literally held my hand throughout this entire time and never once let go. The children of western Massachusetts and the entire country have lost a friend and a great ally. He will always hold a special place in my heart for the grace and determination he taught me."

In 1961, his third year in the House of Representatives and President Kennedy's first year in the White House, Sil risked his own career when he voted against his party leadership to expand the House Rules Committee and end its resistance to my brother's proposals.

Sil's vote was the sort of profile in courage that President Kennedy admired. In a sense, he helped make the new frontier possible, and my brother never forgot what Sil had done.

He was proud of his Italian heritage. We used to joke about how in the old days in Massachusetts, you only had to know two things about foreign policy to get ahead in politics—all Ireland must be united and free, and Trieste belongs to Italy.

Sil was a Roosevelt Republican—Theodore Roosevelt, that is. But he usually got the slogan a little mixed up. Sil carried a big stick. But he talked big too—and then delivered big.

He was the scourge of pork for anything he thought unworthy—and the king of pork for the great causes he did battle for. It is said that all Sil Conte had to do was walk into the House Appropriations Committee room, raise his little finger, and western Massachusetts had a new Federal project. If he had got any more, we'd have had to call the State Conte-chusetts.

And as all of us know, there might never have been a Patriot missile without the incomparable support of a patriot named Silvio Conte.

You could count on Sil to make his point with a prop or a poem that left us laughing, and that endeared him all the more, even as he rolled over us. He was the poet laureate of Congress, and his ode to the budget last October still echoes in these Halls:

"We're frightened by the interest groups.
We act like silly nincompoops.
We can't make cuts that cause some sting.
We cannot even do a thing.
And now we have run out of time,
And that, dear friends, is our own crime.
The Government—it has shut down,
And we're the only game in town.
Let's work to get this budget through,
And get these tourists to the Zoo."

Most of all, he was loved for his commitment to the elderly, the sick, the young, the poor and all the others who need our help the most.

Five years ago, in an address at Boston College, he talked about how he made the difficult decisions. He spoke of long walks alone, in the early hours of the morning, through the empty Halls of this Capitol, searching for answers. The answers don't come from experience, he said, or position papers, or staff experts, or even from common sense. Most of the time, he said, they come straight from the heart.

And what a warm and beautiful heart Sil had, filled with the four great loves of his life—love of family, love of friends, love of country, love of life—and overflowing with that incredible lifelong determination to give something back to America in return for all it had given him.

Near the end of Pilgrim's Progress, a passage tells of the death of Valiant, in words that remind us of Sil and the abiding loss we feel:

"Then, he said, I am going to my Father's; and though with great difficulty I am got

hither, yet now I do not regret me of all the trouble I have been at to arrive where I am.

"My sword I give to him that shall succeed me in my pilgrimage, and my courage and skill to him that can get it. My marks and scars I carry with me, to be a witness for me, that I have fought his battle who now will be my rewarder.

"When the day that he must go hence was come, many accompanied him to the riverside, into which, as he went, he said, 'Death, where is thy sting?' and as he went down deeper, he said, 'Grave, where is thy victory?'

"So he passed over, and all the trumpets sounded for him on the other side."

INTRODUCTION OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE HONORABLE THOMAS S. FOLEY, BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. Elected in 1964, Speaker since 1989, Speaker Foley worked very closely with Sil in enunciating the ideas and agendas of each of their parties.

It gives me great pleasure to present to you the Speaker of the House of Representatives, the Honorable Thomas S. Foley

REMARKS OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE HONORABLE THOMAS S. FOLEY

Mr. FOLEY. Reverend clergy, Mr. Secretary, Senator Kennedy, my colleagues in the Congesss, ladies and gentlemen. In my 27 years in the Congress, I have never known a Member who inspired as much affection as Silvio Conte. To have known him is to have been touched by him. He never took, he only gave. And he never stopped giving—to his Nation, to his State, to his district, to his family, and to his friends.

Corinne and Michelle and Gayle and the family, we do not wish to intrude. We wish to say again that as we shared your love for him, we also share your loss.

Yet we are here more to celebrate his life than alone to mourn his death. It was a life of many textures, all of them bold. He served his State and country in public life for 40 years, 32 of them as a Representative of the 1st District of Massachusetts.

Here in the House of Representatives where he served over three decades, I never met a Silvio Conte detractor, much less an enemy.

His colleagues will remember his roaring in the well against pork-barrel projects and government waste, bellowing against programs that he thought were inefficient and a burden on the taxpayer.

One time when he was ridiculing the mythical, Conte-make-up agricultural program called the mulberry maintenance program, some new Members on our side took offense, being freshman Members from farm States, and proceeded to go out and criticize Mr. Conte, and straining the rules in doing so, for having treated this mythical agricultural program, so lightly. I advised them not to do it. They did it anyway, and Silvio took the well again and said that he had tried to do by humor that which he would now do by serious discussion, and laid a heavy, heavy eloquent attack on what he considered the failures of the agricultural programs in the United States.

After he finished, I went to the new Members and said, "Do you see what I mean?" "Yes," they said, "we see what you mean."

But it was not ever a harsh or personally abrasive emphasis. It was always more bluster than anger, and Silvio was the first to go and share with the person whom he had been debating with a joke or a pat on the back or a friendly smile.

He rose to be the ranking Republican on the Committee on Appropriations, an enormously powerful position in the Congress, and he used it always to do what he thought was necessary to protect not only those interests of the taxpayers but those interests of the people in sound and wise public policy.

He was committed to preserving and expanding health and social services, programs such as biomedical research, maternal and child health care, and student aid. He was a loud and consistent advocate of the poor and against the depredations of acid rain.

He loved his home in Pittsfield and his State and district, and he was unashamed of his efforts to support their interests.

He had the unstinting and constant affection and loyalty of his constituency. The First District became his private political preserve where he sometimes ran unopposed—sometimes, remarkably, with the support of both parties. A Republican with Democratic support is a formidable candidate anywhere, but in Massachusetts that is an especially formidable candidate. He always received margins of victory that were the envy of all of his colleagues. This was partially due to his exuberance, and he was impossible not to like, but mostly due to the fact that he was a loyal Republican. He reached out to all parties, to all factions, to every individual in the House.

He felt that the life of politics and public affairs should be a life of enthusiasm and fun as well as service and dedication, and he brought that spirit to it that has made for all of us who knew him a very sad absence in this Chamber today.

In addition to that, he made the lives of so many millions of people in this country and elsewhere better for his service here, and that is a marvelous monument and testament for anybody who serves in public life. There are millions who do not hear these words. There are, of course, many, many millions who are not in this city or could not be in this room, but although they do not know the name of Silvio Conte, have reason in their own lives to bless his life and his work.

All life is unique, and to break the rules of grammar, the life of Silvio Conte is especially unique. We will not see his equal again.

Silvio, God bless you. Rest in peace.

"Amazing Grace"

(Sung by the United States Navy Band Sea Chanters)

Amazing grace!
How sweet the sound,
That saved a wretch like me!
I once was lost,
But now am found,
Was blind,
But now I see.

Through many dangers,
Toils, and snares,
I have already come;
'Tis grace hath brought
Me safe thus far,
And grace
Will lead me home.

INTRODUCTION OF SECRETARY OF STATE JAMES A. BAKER BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. Especially in view of today's world situation, we are especially honored to have with us the Secretary of State and one of Silvio Conte's closest friends, the honorable Secretary of State, the Honorable James Baker.

REMARKS OF SECRETARY OF STATE JAMES A. BAKER

Secretary of State BAKER. I first met Sil during the hectic days of Jerry Ford's campaign against Jimmy Carter, and I have had the privilege of enjoying his friendship ever since.

I think everybody in this room knows that Sil never made a friend who did not stay a friend for life and, of course, there were literally thousands of them.

Sil touched and won the hearts of all of us who were privileged to know him, and in the finest tradition of public service, Sil touched the life of our Nation as well.

His legacy is going to benefit many, many generations in the years to come.

He really had a marvelous gift for friendship, and it's a good thing that he did, because it isn't really easy to be the only Republican from an otherwise solidly Democratic State. We used to know a little bit about that down in Texas.

But Sil's commitment to what he believed in was really so genuine and his cantankerous charm so winning that folks on both sides of the aisle embraced him, and they embraced him with respect, and they embraced him with genuine affection.

So we will sorely miss him. We will miss his skill. We will miss his dedication and, perhaps above all, as others have said here today, we will miss his delicious irreverence.

He was a consummate legislator, and he was extraordinarily effective as such. Time and again I can recall, when I was Secretary of the Treasury, particularly, Sil interceding as my guardian angel. I'd be testifying before an appropriations subcommittee here, and the going would be getting pretty tough. Suddenly Sil, who was the ranking Republican on the full committee, would arrive to lend his support. He would extend his very big protective wing over me and, frankly, he would save the day.

But my fondest memories of Sil Conte don't have anything at all to do with politics, and they don't have anything at all to do with Washington, DC, because Sil and I spent some of life's truly finest moments outdoors together hunting geese on the Eastern Shore or hunting wild turkeys down in Texas. And my really warmest recollections of my pal center around campfires we would enjoy where we would sit around and tell lies after a good day's hunt.

Sil, of course, was a terrific storyteller. Not all of his best hunting stories were exactly true.

But among the really finest things that he and I enjoyed together was a very high regard for a particular brand of sourmash whiskey, a bourbon called "Maker's Mark." Come to think of it, that whiskey reminds me an awful lot of Sil himself, because it's direct, it's robust, and it leaves you with a very very warm glow, just like Sil Conte.

And Sil, of course, certainly made his mark. We, all of us, his friends, in fact, the entire Nation, are all the better for it.

So today we honor Sil's memory. Despite that long battle with illness, he never lost his gift for enjoying life. Not long ago, I talked to Sil about planning another hunting trip to Texas, and I asked him whether he wanted to go this year or whether he wanted to go next year. He said, "Let's do it this year, Jim," and I think he really wanted to use the time that God saw fit to grant him to the very, very fullest. I will always regret that we were unable to make that trip together, because we would have had one hell of a good time.

To the end, Sil was a lover of life. He was a lover of laughter. He was a lover of people, of nature, of good times and, yes, of good whiskey. And that's why we all loved him.

I can just imagine Sil now up there in heaven with his Maker. They are probably

sitting around Heaven's campfire swapping jokes, telling lies, and drinking Maker's Mark.

INTRODUCTION OF REV. J. DONALD MONAN BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. Sil Conte, in his role as a member of the Appropriations Committee, was exceedingly kind to many educational institutions throughout the country, but no educational institution was as close to Sil Conte as his alma mater, Boston College. We are honored to have Boston College's esteemed president, Father Monan, with us today to offer the benediction.

BENEDICTION BY REV. J. DONALD MONAN, PRESIDENT, BOSTON COLLEGE

Rev. J. DONALD MONAN. God our Father, the gifts you abundantly showered upon Silvio O. Conte he transformed into gifts for the entire Nation, gifts of compassion and of courage, the power to speak eloquently and to listen respectfully, gifts of utter sincerity and strong conviction, gifts of political wisdom and of informed conscience, gifts of faith in You and of love for those ever widening circles that began with Corinne and the children and extended wherever human need arose.

As we listen for a final time for the faint echoes of his voice in these chambers, we recall the words of the Christian liturgy of resurrection, that for those who believe, life is only changed, not ended, and we ask two things: for our esteemed and beloved Silvio, we confidently ask that the copious reward of his good life be continued fullness of exuberant life in the presence of the risen Lord.

And in our own grief, we ask for ourselves not the power to re-create his truly inimitable style, but that the gifts he shared with each of us, with his beloved colleagues in seats of government, remain an inspiring presence to all that we do.

In his stewardship of our good Earth, his inexhaustible care for the young, his energy to push back the shadows of the unknown to better serve humankind, his conscientious awareness that in serving the world's powerful or the world's weak and needy, he ultimately served You as well.

May these gifts and accomplishments of Congressman Silvio O. Conte be our private hopes and our Nation's pride.

And may his good soul and the souls of all the faithful departed rest in peace. Amen.

CONCLUDING REMARKS BY CONGRESSMAN JOSEPH MOAKLEY

Mr. MOAKLEY. Finally I would like to thank the United States Navy Sea Chanters, who are led by Master Chief Musician Ronald M. Chiles, musical director, and conducted by Musician First Class Stephen Wellman, for providing the beautiful music for today's service. They will now sing "America, The Beautiful."

"America the Beautiful"

(Sung by the United States Navy Band Sea Chanters)

America, America
God shed His grace on thee.
O' beautiful for spacious skies,
For amber waves of grain,
For purple mountain majesties
Above the fruited plain.
America, America,
God shed His grace on thee,
And crown thy good with brotherhood
From sea to shining sea.

O beautiful for heroes proved,
In liberating strife,
Who more than self their country loved,
And mercy more than life
America, America,
God shed His grace on thee,
And crown thy good with brotherhood
From sea to shining sea.

Mr. MOAKLEY. The memorial service for Silvio Conte is concluded. On behalf of the family, I thank you for your attendance. Thank you very much.

GREENWOOD'S PROUD CONTRIBUTION TO DESERT STORM: THE 371ST CHEMICAL COMPANY RESERVE

Mr. HOLLINGS. Mr. President, the entire Nation is jubilant at our Armed Forces' victory in the Persian Gulf. In the last 6 weeks, we have witnessed the most massive and successful air campaign in the history of warfare, followed by the largest and most successful ground offensive since World War II. Today, Iraq's armies stand utterly defeated. Kuwait is free. We cannot help but be impressed by the courage of America's warriors. But beyond courage, what impresses me is the sheer competence and can-do professionalism of our men and women in the gulf.

Mr. President, during the Senate recess several weeks ago, I talked to hundreds of South Carolinians in 15 counties, and I can't tell you how proud they are of their National Guard and Reserve units serving in the Persian Gulf war. In community after community across my State, there has been a spontaneous outpouring of patriotism and support for the mobilized units and their families.

An excellent case in point is Greenwood, SC, which is home base for two Army Reserve units, including the 371st Chemical Company now deployed in Saudi Arabia. The 100 men and women of the 371st, under the command of Capt. Lewis M. Whisonant, have played a vital if largely unsung role in the war theater. Their specialty is the chemical decontamination of soldiers and equipment, and they have spent the entire war in a state of constant readiness and alert. Certainly, we share their relief that Saddam Hussein was prevented from using his chemical weapons against our forces.

Mr. President, one measure of the pride of Greenwood and nearby communities is the tremendous sendoff that was given to the 371st at the end of September. Citizens of Greenwood gathered at the Civic Center to wave American flags and yellow ribbons, and to wish their soldiers Godspeed as they set off for Fort Jackson and the war. Many people wept—as much from pride as from worry. People in Greenwood say that the only thing bigger than that sendoff event will be the victory parade when the 371st returns.

Mr. President, this expression of pride is very understandable. Bear in mind that the 371st is made up truly of citizen soldiers—men and women from all walks of life who are serving at great sacrifice to their families and careers. They range in age from 18 to their early fifties. The men and women of the 371st come from all walks of life, including a large number of employees from textile mills in and around Greenwood.

Meanwhile, the entire community has come together to aid and embrace the families left behind. No one can remember ever seeing so many American flags flying day and night, both downtown Greenwood and in surrounding neighborhoods. Cathy Trevino, whose husband, 1st Sgt. Clement V. Trevino, is in Saudi Arabia with the 371st, heads up a family support group and is working tirelessly to reach out to spouses in Greenwood and as far away as Anderson and Charleston. My hat is off to all of these people—for their sacrifices, for their generosity, and for their quiet courage on the homefront.

Mr. President, the men and women of Greenwood's 371st Chemical Company are among our best and finest. They are doing an extraordinary job under the most dangerous and demanding of circumstances. They are a credit to their Nation, and are doing South Carolina proud. I join all Americans in praying for their safe and speedy return. We will welcome them back as the heroes they are.

CLAUDE YAGER: 65 YEARS OF SERVICE TO MASONS

Mr. PRYOR. Mr. President, I rise today to pay tribute to a gentleman that I am proud to call my friend. This gentleman is Mr. Claude Yager of Forrest City, AR.

Claude has been a dutiful member of the Forrest City community, a person with a keen sense of civic responsibility and civic pride. A faithful member of the Forrest City Mason Lodge No. 198, he has held every office of the local lodge. In fact, he has served faithfully as a member of the Masons for over 65 years, beginning in 1926 at Mason Lodge No. 81 in LaGrange, TN. He then moved to Rossville, TN, where he served as Worshipful Master before moving to Arkansas.

Mr. Yager was recently honored at a ceremony where Arkansas Grand Master James Weatherall presented Claude with a Certificate of Merit and Appreciation.

He is also an active member in the First Baptist Church of Forrest City, as well as the Forrest City Camp of Gideons International.

Mr. President, I am pleased to bring this man's achievements to the attention of my colleagues and I extend to him my personal thanks and congratulations.

S. 62—MEDICAID AMENDMENTS

Mr. MOYNIHAN. Mr. President, on the first day of this Congress, my colleague, Mr. DANFORTH, and I introduced

S. 62 to require States participating in Medicaid to identify, evaluate, and develop plans for the care of the homeless mentally ill. Our bill would not eliminate this problem. But it might be a start. And we can simply no longer be passive. The problem of mentally ill homelessness is a scandal. Indeed, just this past weekend a thoughtful and challenging oped by Michael Spencer, "Calcutta on the Hudson," appeared in the Outlook section of the Washington Post. I ask that it be printed in the RECORD, and I urge my colleagues to support S. 62.

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

CALCUTTA ON THE HUDSON

(By Michael Specter)

NEW YORK.—She was beautiful and so was her son. In one hand she carried the umbrella that comes from a generous donation to National Public Radio. Her child, who was about 4 held onto the other hand. Together, they watched in silence as a grubby man slowly made his way up the movie line.

"What does he want?" said the boy, as he tried to learn from his mother's face whether or not to be scared. "Doesn't he have a ticket?"

"No dear," she said, clearly worried about what would come next. "He's homeless. He doesn't have anything."

"Yeecchh," said the child without a moment's hesitation. "Get rid of him.'

The ticket line erupted in laughter and cheers. The outraged mother, however, was not part of the fan club. She yanked her bewildered child out of line gave him what appeared to be an extremely brutal lecture on the virtues of compassion and then hauled him away, presumably toward home.

The woman's immediate and appropriated response made me feel like a fool. For while I was not among the cheering section. I certainly did smile when the boy made his comments. These days it is very difficult to do anything else.

Homeless people live on my street. They stand in the bank lobby around the corner and watch as the cash machine spews out money on demand. They are at every movie theater every day. Three times a week, they rip through my trash looking for an old shoe, half a meal or some tin they can recycle.

We know all that, I guess. New York has a huge, homeless population, possibly more than 70,000. As a percentage of residents, it may be smaller than the District's but in a city of houses, such as Washington, the homeless can become almost invisible. Not here. Here we all live on top of each other so that no matter who you are the problem never goes away. They are mentally ill, they use drugs, they have no hope. They are the dark reflection of a sick society. They symbolize the housing crisis and the jobs crisis and the uncomfortable Darwinian reality that the strong rarely do help the weak.

When I came back here last fall after five years in Washington, I couldn't believe how many people were living in the street. But eventually I came to accept it. The homeless live in every neighborhood, not just the bad ones. In my relatively affluent area, it is not hard to find window signs that say, "No crack, no menus, no homeless." The signs certainly don't scare away crack dealers or the homeless.

There is really nowhere to scare the homeless to. Unless you travel exclusively by limousine, you cannot pass a day in the city without seeing a man wearing a cardboard sign that says "Please Help This Vet With AIDS," or "I Would Do Anything for a Clean Place to Sleep." City shelters have become an abomination. Welfare hotels are much worse. Many prefer to risk freezing to death than go to either.

So they live on milk crates over steam vents, sweating in the icy weather. Plastic wrap shanty towns have arisen in nearly every city park. Dumpsters and abandoned cars have proven to make nice homes. At Columbus Circle each night, a quiet and organized army of street people assemble with shopping carts full of tin cans and paper they can recycle for money. Dickens could not have invented this vision of hell, as they sift through the city's rubbish, piling up pennies for food.

The police gently try to move them along, but as one cop said to me at the Port Authority Bus Terminal during a patrol on a bitterly cold day, "I don't care what my orders are. I am not going to be the one to send these people into the street to die." So they live in corners, under buses, in the stairwells.

One day not long after I got here I decided to walk to work and give a dollar to every person who asked me for money. Fifty blocks: $48. The first time we found somebody sleeping in our foyer last fall, I thought that making it available as shelter might be a good way for us to help the homeless. The next day a psychotic vagrant stabbed somebody around the corner from our apartment. Now I lock the outer door every night.

Slowly, inexorably I have became acclimated to ignoring the plight of others. I stopped carrying extra quarters. I avoid certain blocks and parts of Central Park. Not out of fear, really. It's just escapism.

I began to detest the hopeless wretches who constantly occupy the benches at my subway stop. I have never been on a street, a subway or in a train station here without some person accosting me. There is a woman who lives with her two children on the steps of Carnegie Hall. I don't go there. Others hang around the parking garage that costs more each month than any of these people could possibly see in a year.

After a while, I befriended a couple of the guys who live, literally, on my street. I thought maybe if I had some contact with one or two of them, I would feel less guilty about ignoring the rest.

One is handicapped and says he is a veteran. He is quiet, Hispanic and in his forties. He calls himself Ralph, but who knows what his name is?

Ralph works the Citibank cash machine at 94th Street and Columbus Avenue. He told me he never asks for anything. He just sits there, in his wheelchair with a paper coffee cup on his lap, waiting for someone to walk by with a handful of stiff, new bills. He says he wants to move to Florida, or California where it is warm and he has friends, but he doesn't think he'll make it.

"I don't know," he told me with a shrug of resignation. "I'm kind of set up here. And anyway, it would be tough to leave the city."

He meant that. He really did.

The other guy I talk to a lot is considering legally changing his name to Nameless.

"It sort of goes with the anonymity of my situation," he said. "It's not as if my name really matters." He is one of the wizened street people who could be 30 years old or 50. He doesn't want to say. In fact he reveals little about himself. He has been after me to show him some of my stories ever since I told him I was a newspaper reporter. He reads the local papers pretty carefully and says he has heard good things about The Washington Post.

But I haven't been able to force myself to show him my work. Don't ask me why, but giving out quarters was a lot easier than talking to these two perfectly nice men each day. Probably more useful too.

Seeing the homeless always puts me on edge now. That means I'm always on edge. It would be simplistic to call it conscience, but it's hard to read the presence of a vast horde of semi-clad street people as anything other than a constant cloud of anguish that even wealthy New Yorkers must confront each day. It has become like Calcutta, the price you pay to live in the most interesting city in America. The only way to make the problem go away, I am convinced, would be to leave, and who would want to do that?

One morning, a black man in ripped T-shirt and very little else started to motion at me on the subway. I paid no attention, but he kept flicking his wrist at me. Still, I ignored him.

He started for me and just as I was deciding whether to run for it or stomp on his barely covered foot, I heard him speak. "Your color is twisted man," he said to me. "It's all messed up."

Oh God, I thought, not this. "Your color," he repeated. "Fix it." A nut, a vicious racist nut.

Suddenly, he reached for my neck and smoothed the crinkled collar of my suit jacket.

"There," he said as he turned to walk away. "Now you're looking good."

AIKEN'S PRIDE IN DESERT STORM: THE 450TH ORDNANCE COMPANY

Mr. HOLLINGS. Mr. President, America's Armed Forces today celebrate their remarkable blitzkrieg victory in the Persian Gulf war. Over the last 6 weeks, we have witnessed, courtesy of CNN, the most massive and successful air campaign in the history of warfare, followed by the largest and most successful ground offensive since the Second World War. Today, Iraq's armies stand utterly defeated. Kuwait is free. We have all been impressed by the courage of America's warriors. But beyond courage, what impresses me is the sheer competence and can-do professionalism of our men and women in the gulf.

Mr. President, during the Senate recess several weeks ago, I talked to hundreds of South Carolinians in 15 counties, and I can't tell you how proud they are of their National Guard and Reserve units now serving in the Persian Gulf war. In community after community across my State, there has been a spontaneous outpouring of patriotism and support for the mobilized units and their families.

An excellent case in point is the town of Aiken, SC, whose Army Reserve unit, the 450th Ordnance Company, has played a vital, if largely unsung, role in America's successful gulf campaign. The 164 men and women of the 450th, under the command of Capt. Ardrow J. Vause, Jr., were activated on Septem-

ber 27 and deployed to Saudi Arabia in early November. Before and during the ground war, they worked round the clock—receiving, storing, and issuing ammunition for front-line fighters. Obviously, they have worked at peak tempo since the ground war started on Saturday, and they will continue to play an important role during the mop-up and wind-down phases still to come.

Mr. President, one measure of the pride of the people of Aiken was the tremendous sendoff ceremony, complete with flags and yellow ribbons, in honor of the 450th when they departed for Fort Gordon and the war in September. Many in the audience wept—as much from pride as worry. People in Aiken say that the only thing bigger than that sendoff ceremony will be the victory parade when their fighting men and women come home.

Mr. President, this expression of pride is very understandable. Bear in mind that Aiken's 450th Ordnance Company is made up of truly citizen soldiers—men and women from all walks of life who are serving at great sacrifice to their families and careers. They range in age from 19 to 59. Several men left behind pregnant wives. The reservists called up from Aiken include policemen, firemen, construction workers, workers from Savannah River site and Owens-Corning Fiberglas, you name it.

The entire community has rallied together to aid and embrace the families left behind. Two people in particular, Mrs. Betty Crane and 1st Sgt. Thomas E. Boulware, have played a leadership role in organizing the 450th Family Support Group and extending a helping hand to families of soldiers in the gulf. Schools in Aiken have gone all out to send letters and care packages to the soldiers. No one can remember ever seeing so many American flags flying day and night, both downtown and in neighborhoods all around Aiken. In particular, my hat is off to all of the reservists' families—for their sacrifices, for their generosity, and for their quiet courage on the home front.

Mr. President, the men and women of Aiken's 450th Ordnance Company are among our best and finest. They have done an exceptional job under the most dangerous and demanding of circumstances. They are a credit to their Nation, and are doing South Carolina proud. I join all Americans in praying for their safe and speedy return. We will welcome them back as the heroes they are.

THE PRAYER OF THE REVEREND LUTHER MILLER

Mr. STEVENS. I have here the prayer of the Reverend Luther Miller, which was given at St. David's Episcopal Church last Sunday, March 3. It is a prayer that Reverend Miller gave concerning the end of the war in the Persian Gulf.

I am not trying to substitute for the Chaplain of the Senate. But I do believe that in view of some of the comments that have been made about the attitudes of our members of the clergy concerning the war in the Persian Gulf that a balance and this prayer should be commended to the Senate.

I ask unanimous consent that this be printed in the RECORD in full.

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

THE PRAYER OF REV. LUTHER MILLER, ST. DAVID'S EPISCOPAL CHURCH, ON SUNDAY, MARCH 3, 1991

Almighty God, our heavenly Father, who in thy wisdom and with great power has from the beginning determined the courses of nations, we give thee most humble and heartfelt thanks for the end of the war in the Persian Gulf.

We commit to thy gracious keeping with our great thanks the forces of the coalition nations, and the killed and wounded, the missing, the prisoners of war and those whose lives have been disrupted and shattered by the conflict.

We beseech thee also to hasten the fulfilling of thy purposes in this world and to establish a lasting peace of righteousness on the earth that thy people may joyfully serve thee in thankgiving and godly quietness. Through Jesus Christ Our Lord. Amen.

Almighty God, our heavenly Father, guide, we beseech thee, the nations of the world into the way of justice and truth, and establish among them that peace which is the fruit of righteousness, that they may become the kingdom of our Lord and Saviour Jesus Christ. Amen.

THE SOUTH CAROLINA GUARD'S ELITE TANKERS: THE 1ST 263D ARMOR BATTALION

Mr. HOLLINGS. Mr. President, America's Armed Forces today celebrate their remarkable blitzkrieg victory in the Persian Gulf war. Over the last 6 weeks, we have witnessed, courtesy of CNN, the most massive and successful air campaign in the history of warfare, followed by the largest and most successful ground offensive since the Second World War. Today, Iraq's armies stand utterly defeated. Kuwait is free. We have all been impressed by the courage of America's warriors. But beyond courage, what impresses me is the sheer competence and can-do professionalism of our men and women in the gulf.

Mr. President, during the Senate recess several weeks ago, I talked to hundreds of South Carolinians in 15 counties, and I cannot tell you how proud they are of their National Guard and Reserve units now serving in the Persian Gulf war. In community after community across my State, there has been a spontaneous outpouring of patriotism and support for the mobilized units and their families.

Excellent cases in point are the towns of Mullins, Conway, Dillon, Marion, and Myrtle Beach, each of which is home to a line tank company of the South Carolina National Guard's 1st 263d Armor Battalion. The 1st 263d, headquartered in Mullins, is commanded by Lt. Col. Buddy George, and includes some 600 men and 54 top-of-the-line M1A1 battle tanks. The battalion was activated for duty in the Persian Gulf war on November 30, and has been training for the last 3 months at Fort Stewart, GA, and Fort Irwin, CA, preparatory to being deployed in Saudi Arabia.

I know there are a lot of gung-ho tankers in the 1st 263d who are disappointed that the war came and went before that deployment could take place. But I also know there are a lot of wives and family members back in South Carolina who are enormously relieved, while also being very, very proud of their guardsmen's call to duty and service. I share that pride, and I speak for a grateful Nation in thanking the men of the 1st 263d for the sacrifices they have made since being activated 3 months ago. They served their country no less loyally and with no less dedication than their comrades-in-arms deployed in the Persian Gulf.

Mr. President, in addition to the Headquarters company, under Capt. Harold Jones, based in Mullins, the 1st 263d consists of five line companies, each based in a different locality: Company A, based in Myrtle Beach, under Capt. Jerry Jenerette; Company B, based in Dillon, under Capt. Edward Dannemiller; Company C, based in Conway, under Capt. Steve Wright; Company D, based in Marion, under Capt. Kenneth Moses; and Detachment 1, based in Columbia, under 2d/Lt. Jonathan Tramell. Each company trains and drills at its own local armory, and the battalion trains as a single unit once a year at Fort Stewart, GA.

Mr. President, one measure of hometown pride in the 1st 263d was the sendoff ceremonies held in their honor, complete with flags and yellow ribbons. The send-off in Mullins was much the same as in the other towns. Hundreds of people gathered for speeches and prayers. Many in the audience wept—as much from pride as worry. As the convoy rolled down Highway 76 bound for Fort Stewart, citizens turned out for 20 miles past Mullins to wave flags, cheer the soldiers on, and wish them Godspeed. People in Mullins say that the only thing bigger than that sendoff ceremony will be the victory parade when their fighting men come home. Meanwhile, a special gas lamppost dedicated to the troops has been erected in front of the county library on Main Street—its flame will remain lit until the last man of the 1st 263d returns home.

Mr. President, this expression of pride is very understandable. Bear in mind that the 1st 263d Armor Battalion is made up of truly citizen soldiers—

men from all walks of life who are serving at great sacrifice to their families and careers. They range in age from 18 to 59 years old. Many men left behind pregnant wives. The reservists called up from Mullins, Conway, Dillon, Marion, Myrtle Beach, and Columbia include nuclear engineers, teachers, mill workers, doctors, attorneys, you name it.

In each town, the entire community has rallied together to aid and embrace the families left behind. Karen George, wife of the battalion commander, has done a superb, tireless job of organizing the 1st 263d Family Support Group, extending a helping hand to families around the State of South Carolina. My hat is off to all of the reservists' families—for their sacrifices, for their generosity, and for their quiet courage on the home front.

Mr. President, the men of the 1st 263d Armor Battalion are among our best and finest. They have done an exceptional job under the difficult and demanding of circumstances. They are a credit to their Nation, and are doing South Carolina proud. I join all Americans in praying for their safe and speedy return home. We owe them a true debt of gratitude.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,181st day that Terry Anderson has been held captive in Lebanon.

JOHN A. McALLISTER: MOUNT CARMEL'S PREMIER PUBLIC SERVANT

Mr. HOLLINGS. Mr. President, if ever there were a sterling example of a tireless, dedicated public servant it is John A. McAllister of Mount Carmel, SC. John is Mayor of Mount Carmel, but that office is almost incidental to the full breadth and scope of his service to the people of McCormick County and South Carolina down through the years. Likewise, John owns a successful retail business and a huge farming enterprise, but those accomplishments are just a fraction of his true contribution to the economic vitality of the Savannah Valley region.

Mr. President, John McAllister is one of those special, standout people who define the character of a town, who give it distinction far beyond its size in population or square mileage. For four decades, he has been a tireless dynamo in promoting economic development throughout rural South Carolina, and in championing conservation efforts across the State.

John founded the West Carolina Rural Telephone Cooperative in 1951 and has served as its president ever since, while also serving now as one of six representatives to the National Rural Telephone Bank Board in Washington. He has been the driving force behind creation of Savannah Lakes Village retirement community.

In addition, John is an outspoken champion of soil and water conservation, twice honored by the South Carolina Wildlife Federation and past State "Conservationist of the Year." He has led the fight for controlled development on Lake Thurmond.

Mr. President, late last year Clemson University conferred an honorary doctor of laws degree on John McAllister, noting that "through his business achievements, his personal conduct, and his years of unselfish public service, he has helped improve the lives of countless South Carolinians." Frankly, I don't know who is honored more by that honorary degree, John McAllister or Clemson University. I do know, however, that the honor was richly deserved.

For all of his awards and distinctions, I know that John's greatest pride is his wife, the former Catherine Harter of Ninety Six, and his five children: John, Jr., Ed, Cathy, Wes, and Mary. Cathy, a jewel of a young woman, worked in my Senate office before going on to graduate school at the University of South Carolina recently.

Mr. President, I value John McAllister's friendship and counsel, and have the utmost respect for his distinguished public service. My hat is off to John for all he has done and continues to do for the State of South Carolina.

FLORENCE'S BEST AND FINEST IN THE PERSIAN GULF

Mr. HOLLINGS. Mr. President, Desert Storm has passed and we are in Day 6 of the cease fire in newly liberated Kuwait. In 6 brief weeks, Americans have witnessed the most massive and successful air campaign in the history of warfare, followed by the largest and most successful ground offensive since World War II. Today, Iraq's armies stand utterly defeated. Kuwait is free. We cannot help but be impressed by the courage of America's warriors. But beyond courage, what impresses me is the sheer competence and can-do professionalism of our men and women in the gulf.

Mr. President, during the Senate recess several weeks ago, I talked to hundreds of South Carolinians in 15 counties, and I can't tell you how proud they are of their local National Guard and Reserve units in the Persian Gulf war. In community after community across my State, there has been a spontaneous outpouring of patriotism and support for the mobilized units and their families.

An excellent case in point is Florence, SC, which is home base for three units that have served with distinction in this war: the 132d Military Police Company of the National Guard, and two Army Reserve units, the 413th Chemical Company and the 460th Replacement Detachment. The 132d, commanded by Capt. John D. Broadway, includes some 150 MP's who provide security, direct traffic, man check points, and oversee Iraqi POW's. Needless to say, in this last capacity, the men and women of the 132d truly have had their hands full since the ground war began last Saturday.

The 413th Chemical Company, under the command of Capt. Phillip McCluskey, includes 120 men and women who specialize in chemical decontamination of soldiers and equipment. They spent the war in a state of constant readiness and alert, and, obviously, we are all enormously relieved that Iraq was prevented from carrying out its threat to use chemical weapons. In addition, the Reserve's 460th, whose 40 men and women are led by Capt. Martin Thomas, have worked nonstop in a variety of administrative functions in the war theater.

Mr. President, one measure of Florence's pride is the tremendous sendoff ceremony that was held at Magnolia Mall last September. Thousands of citizens gathered to wave American flags and yellow ribbons as the troop convoy departed for Fort Jackson and the war. Many people wept—as much from pride as from worry. The people in Florence say that the only thing bigger than that sendoff ceremony will be the victory parade when their soldiers come home.

Mr. President, this expression of pride is very understandable. Bear in mind that these National Guard and Reserve units are made up truly of citizen soldiers—men and women from all walks of life who are serving at great sacrifice to their families and careers. They range in age from 19 to their midfifties. Many left behind pregnant wives. The Desert Storm contingents from Florence include city police officers, South Carolina highway patrolmen, school teachers, steelworkers, and professors from Francis Marion College.

During the Christmas season, a special Christmas tree decorated with yellow ribbons and soldiers' names were erected at the corner of Palmetto and Coit. The entire Florence community has come together to aid and embrace the families left behind. Stores are offering discounts. Local banks and finance companies are going out of their way to accommodate soldiers' families. Meanwhile, Pat Poston and Francis Wiggins, leaders of the National Guard and Reserve family support groups, have worked tirelessly to reach out to spouses not just in the Florence area but as far away as Columbia and Charleston. My hat is off to all of these people—for their sacrifices, for their generosity, and for their quiet courage on the home front.

Mr. President, the men and women of Florence's Guard and Reserve units deployed in Desert Storm are among our best and finest. They are doing an extraordinary job under the most dangerous and difficult of circumstances. They are a credit to their Nation, and are doing South Carolina proud. I join all Americans in praying for their safe and speedy return. We will welcome them back as the heroes they are.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, all time for the conduct of morning business has now expired.

The period for morning business is now closed.

RESOLUTION TRUST CORPORATION FUNDING ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 419, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 419) to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligations to depositors and others by the least expensive means.

The Senate resumed consideration of the bill.

Pending:

D'Amato amendment No. 13, to protect tenants from unnecessary eviction by the Resolution Trust Corporation; and

Harkin/Kohl amendment No. 23, to reduce funding for the Resolution Trust Corporation and require the President to propose progressive revenue options to pay for future funding requests.

AMENDMENT NO. 23

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the Harkin amendment, under which there will be 20 minutes of debate to be equally divided.

The Senator from Iowa is recognized for not to exceed 10 minutes.

Mr. HARKIN. Mr. President, the amendment Senator KOHL and I have offered is very straightforward.

Again, for the benefit of those Senators who were not around last evening when we offered it, when I explained the amendment, let me try to sum up again what this amendment does.

First, our amendment provides that the amount of funds approriated is reduced from $30 billion to $15 billion.

Second, it provides when the President next requests additional funds for the RTC, he must send the Congress options to raise revenue to pay for the request which will minimize the cost to low-, moderate-, and middle-income taxpayers.

And, third, he must give additional suggestions on how to make the RTC more efficient.

We are offering this amendment because we believe the RTC has to change its ways. There are too many cases where assets were sold at low prices; too many cases where the RTC is seeing the property they hold deteriorate. Huge sums are being lost by our taxpayers.

The Congress should consider the option of paying for the S&L losses by raising revenue from the very wealthy, who most benefited from the S&L debacle in the first place. If this bill passes without change, the $30 billion provided will be borrowed by the Treasury. That borrowing will cost taxpayers $72.5 billion in interest over the next 30 years. Of course, that cost will be paid by all taxpayers in this country: low-, moderate-, and middle-income included.

Our amendment calls on the President to provide options to minimize this burden on our moderate and low-income taxpayers. It does not require the Congress to approve a revenue increase.

There were a lot of quotes last evening from the GAO about the RTC. I have another quote from GAO from last October:

"Our position—" that is GAO's position—"is that the net loss part of the bailout should be financed by taxes."

The question is, taxes paid by whom? Under the bill, it is going to be paid, again, by the working people of this country who did not benefit a whit from all these high-interest rates and things the S&L were putting out that got them in this trouble.

We want the President to be involved in this process of suggesting different options, and let us take a look at that.

One other thing that was raised last evening is there might not be enough money in $15 billion to take care of the 95 failed S&L's, plus some other deals that are being developed that could use up the cash.

The $15 billion, I believe, is sufficient. And they have left-over cash on hand, something in the neighborhood of $10 billion, that we know about. Plus, one thing I did not point out last evening, the RTC can, without the approval of Congress, borrow another $5 billion directly from the Treasury under section 21(A) of the Home Loan Bank Act that was passed in title V of FIRREA.

They could even, beyond that, sell more of their billions of dollars in assets for additional working capital. So the RTC is not going to run out of money.

The question is, do we give them $30 billion when all they really need is perhaps $14 or $15 billion, and then let them continue to run the way they have been running? Or will we put them on a shorter leash, and say: Here is $15 billion. Come back again, but before you come back again the administration has to point out different options for raising the revenue to pay for it that minimize the impact on low-, moderate-, and middle-income taxpayers in this country.

That is basically what this amendment does. I hope all Senators will be able to support this amendment to make the RTC operate in a more efficient manner.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I yield to the distinguished Senator from Wisconsin, a cosponsor of the amendment.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for up to 5 minutes, 42 seconds.

Mr. KOHL. I thank my colleague.

Mr. President, at its heart, the Harkin-Kohl amendment is about protecting taxpayers' money. The amendment would cut the funding for the RTC in half—from $30 billion to $15 billion—and it would require the administration to present Congress with a justification for further funding and a serious plan to improve the way the RTC spends the money.

In other words, the Harkin-Kohl amendment forces this body and the administration to take responsibility for the huge amount of money the RTC must spend. It forces us to think—perhaps more than we would like—about how the RTC is managing the bailout, and it forces us to protect taxpayer money.

My colleagues from the Banking Committee have argued that delaying funding for the RTC could waste hundreds of millions of dollars, and I agree. But this amendment is not about delaying or denying funds to the RTC. It is about making sure the funds we do give to that agency are fully justified and well spent. We all know we are going to spend enormous sums to clean up the S&L mess. But we do not have to make a mess of the cleanup. Adopting this amendment and requiring more planning and thought is the best way to do what we have to do in the way it ought to be done.

Asking the administration to explain its RTC funding requests will not end up increasing the bailout costs. In fact, it seems to me, we are in danger of wasting even more money if we appropriate funds for the RTC without solid justification.

The choice we are asking you to make this morning is between funding the RTC at $30 billion or $15 billion—funding the RTC without any requirement that they evaluate their organization and operation or having a careful examination of the system.

When we vote on this amendment, I ask my colleagues to answer two questions: Do you like the way the RTC is spending the taxpayer's money now? Do you want the RTC to continue to operate the way they are now? If your answer is "yes," then vote against the

Harkin-Kohl amendment. If your answer is "no," then vote with us and vote for some real congressional oversight and administration involvement in making this operation cost effective and efficient.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

The Senator from Michigan [Mr. RIEGLE].

Mr. RIEGLE. I yield myself 5 minutes at this time.

The PRESIDING OFFICER. The Senator is recognized for up to 5 minutes.

Mr. RIEGLE. Mr. President, I rise to oppose the Harkin-Kohl amendment, and I do so with full respect for my colleagues and the serious interest that they bring to this issue. In due course, I will be asking my colleagues, along with Senator GARN, to join us in voting to table the amendment.

I oppose the amendment for three reasons. The first and most critical is that it will cost the taxpayers more money than otherwise would have to be spent. It will not save money, in my view.

Second, it will not give us sufficient time to carefully consider important legislative proposals that are now coming forward, some on the table, that could actually allow us to make basic improvements in the RTC's management structure and operations.

Third, I think an area of their amendment raises some important budget and tax questions that I think ought not to be dealt with at this time and which by themselves I think could prove detrimental to the national economy.

Having said that, I must also say that I sympathize with the concerns that they are expressing here, and I share their concerns. All of us have heard of mistakes made by the RTC and serious problems in some areas of their operations. GAO testimony clearly points out the various weaknesses in the RTC, but at the same time, the GAO concludes that much of their work now appears to be carried out thoughtfully and well and that, according to the GAO, they appear to be making considerable progress in other areas. So that gives us something of an independent assessment on the degree of improvement in the RTC operation.

Congressional oversight in this area has been continuous—I cited that record yesterday—and it will continue to be carried out by our Banking Committee here and also in the House. I think we do need to keep the RTC on a short leash. In fact, the underlying bill we brought forward from the Banking Committee does that. It only provides enough funding for the next 7 months. Anything less than that, we are told, will increase delays and inefficiencies in the disposition of failed institutions and end up costing more money, the weight of which and the responsibility for which falls back on taxpayers, which, of course, we all are. In the words of GAO, any less money that we are asking for here in the time period through the remainder of this fiscal year would be "inefficient and costly."

This amendment provides only enough money to resolve the 95 thrifts that the RTC currently has waiting, ready to be sold off through the bidding process. It will probably take about 4 months to actually complete those transactions. During that 4-month period of time, that list of 95 will absorb virtually all of the reduced amount of money the sponsors of this amendment are calling for, namely, $15 billion. That money will be exhausted. That will prevent lining up the next set of institutions that would have to be dealt with and resolved beyond the 4-month period.

So we would find, if we were to adopt this amendment, and I hope we will reject it, we will be financing only the next 4 months of activity, but we would, in fact, be creating an enormous question about what would happen beyond that point and, in a sense, I think, prevent the orderly disposition and shutting down of institutions that should be closed.

So I think the $30 billion figure is the amount that is needed here, and I think anything less than that will have the effect of delaying the operation and driving up the cost. The RTC estimates that gathering and paying for the liabilities of open insolvent thrifts costs somewhere between 130 and 140 basis points in interest premium over and above what is paid by the Treasury on a debt issue where that same liability is financed directly at the lowest possible financing cost. So if we only provide $15 billion here and it only carries us 4 months, we are going to be incurrring this higher interest premium for a longer period of time, and all of that, in the end, spills back on taxpayers. I think it would be irresponsible for us to do that.

Some say that we can recoup more money by implementing reforms in the RTC structures and procedures. We are not now in a position to do that. We have scheduled a hearing in the Senate Banking Committee on April 11. I have invived people to come forward at that time and present those proposals. We are going to study them carefully. If we feel we can make a recommendation for changes in administrative practices, procedures, what have you, we will do so.

Finally, let me just say one other thing. We have in our bill a reporting requirement that says that a plan has to be presented to the Congress as to precisely how these moneys are to be spent, and we have to get that plan within 10 days of the enactment of this legislation. That will help us do a better job of tracking what is done over there. I think it is very important that this amendment be tabled at this time.

The PRESIDING OFFICER. Who yields time? The Chair recognizes the Senator from Utah [Mr. GARN].

Mr. RIEGLE. I yield the Senator 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for up to 3 minutes.

Mr. GARN. Mr. President, I oppose this amendment and certainly agree with the comments of the distinguished chairman of the Senate Banking Committee. This is not a new argument. Unfortunately, it is one that has been going on for a period of 6 or 7 years. Over and over again, Congress has been unwilling to give the regulators the necessary tools or the money to properly fund the resolution of bankrupt S&L's. There is no doubt in this Senator's mind that if the $15 billion FSLIC recap had been approved by the House of Representatives in the fall of 1986, we would not even be here debating this today because that would have funded a good part of the S&L problem without one dime of taxpayers' money involved. But we are here today talking about a stop-and-go method of financing that has proven in hindsight over and over and over again to cost the taxpayers more money. I will quote again from the GAO testimony:

> We believe the short-term funding bills covering less than 1 year will prove inefficient and costly and simply add to the eventual cost of resolution by allowing failed institutions to continue operating and incurring losses.
>
> Secretary Brady estimates the cost of the slowdown in resolutions caused by the funding delay in October 1990 to be $250 to $300 million.
>
> Additional delays would cause additional costs to the taxpayers of $750 to 850 million per quarter or $8 to $9.5 million per day.

We hear a great deal about holding RTC on a short leash. I think we need to be reminded that the RTC requested such sums as may be necessary. They asked for a blank check. The Senate Banking Committee said no, we desire to hold you on a short leash, and that short leash is September 30. So we are only talking, as the chairman said, about less than 7 months now when we will have to revisit this issue again. To revisit it in 2 to 2½ to 3 months simply will cause increased costs.

It is no different than if you were to run up a big charge on your MasterCard, Visa, or American Express. It is there and you know you are going to have to pay it. To sit back and say well, I will only pay part of it now, part of it later, and I will think about it in the future, all of us know what happens. The interest goes up, and you pay more than if you resolve it more quickly.

So we are going to look at changes in the RTC. I do not think there is anyone who is totally satisfied with their operation. The Senate Banking Committee

will carry out its responsibility. But without the $30 billion now we are simply going to guarantee hundreds of millions of dollars of more costs to the taxpayers.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator controls 3 minutes 3 seconds.

Mr. HARKIN. Mr. President, I yield myself whatever time I may consume.

The PRESIDING OFFICER. The Senator is recognized for up to 3 minutes.

Mr. HARKIN. Mr. President, again I have heard the arguments made by the distinguished chairman and ranking member. There are a couple of things we have to keep in mind. When you talk about cost to the taxpayers, one must consider that the $30 billion we are talking about here, will be bonded. We will sell bonds to finance it. Interest will be paid over the next 30 years and will amount to about $72.5 billion.

It is real money. It is not play money. It is real money that the taxpayers of this country, our kids and grandkids will have to come up with, and at the end of 30 years of course we will float ourselves another bond. We are going to dig ourselves a deeper hole by continuing on this path. As I tried to point out yesterday, the $15 billion would, I believe, cover the 95 deals that are in essence at stake right now. There is about $10 billion in cash on hand from what we did in 1989. That is about $25 billion.

As I pointed out, there is an additional authority for RTC to borrow $5 billion under title V. Plus, I would point out that right now the RTC has an inventory as of the end of last year of $143.8 billion in assets. So we are being asked to vote today for $30 billion that really is going to cost this country, ourselves, our kids, our grandkids, $75.5 billion in interest payments over the next 30 years.

I believe that one of the main points of our amendment is not being talked about because we are focusing on the amount of money. One of the main thrusts of the amendment is to ensure that the next time the President comes down and asks for more authority, he has to submit options to the Congress on how to raise the revenue that will minimize the impact of low-, moderate, and middle-income taxpayers of this country and, second, he must submit to us recommendations as to how to make the RTC more efficient.

I have heard the chairman and ranking member talk about problems in the RTC. I believe the administration should be involved in this process also and come to Congress and recommend ways of making the RTC operate more efficiently, that really is the basic thrust of our amendment—the amendments calls for funding options to raise additional revenue that minimize the impact on our middle-income taxpayers, to improve the efficiency and operation of the RTC, a system of budgetary accounting that accurately reflects such outlays' impact on the Federal budget deficit, and recommendations for improving the accountability and efficiency of the RTC.

The PRESIDING OFFICER. All time controlled by the Senator from Iowa has expired.

Who yields time? The Chair recognizes the Senator from Michigan.

Mr. RIEGLE. How much time remains?

The PRESIDING OFFICER. The Senator controls 1 minute.

Mr. RIEGLE. To respond to the Senator from Iowa, one of the problems here is the question of whether the economy today can take a major tax increase. If we provide $15 billion now as they are recommending and then leave the remaining $15 to be raised, add another $50 billion that is projected beyond that, that is $675 billion. That is a big tax increase. Quite frankly, with the economy in recession today—most of the economic news indicates that the recession has not bottomed out—the notion of hitting the economy with a tax increase of that size is very questionable. It can be debated, but I think Members would want to think long and hard about signing up for that.

In any event, I yield back the remainder of my time, and I move to table the amendment.

Mr. GARN. I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

Mr. KERRY. Mr. President, I rise in support of the amendment from the Senator from Iowa.

The American people deserve an assurance that its Government is proceeding in the least costly and most efficient manner to resolve the savings and loan crisis. Sadly, I don't believe there is anyone in Government who can give that assurance.

The American people also deserve to know where the money to pay for the bailout is coming from. Unbelieveably, that too remains a mystery.

Finally, the American people deserve to know what impact this mess is going to have on the Federal budget deficit. The deficit is ballooning out of control and we should not undertake such a massive authorization without better understanding its ramifications for the national debt.

Mr. President, there are those who will argue that by limiting the amount of money authorized for the bailout—by making the Resolution Trust Corporation come back and justify a request for more money—that somehow we are acting irresponsibly. The argument is that we are trying the hands of the agency that is charged with the task of bailing out the thrift industry and that providing less money will cause immediate costly delay.

I have a great many problems with this argument. Let us not forget that we are the U.S. Congress—not a rubberstamp parliament.

We have responsibility for oversight. We have a responsibility to make the Resolution Trust Corporation justify and account for every dollar it spends. No one wants to micromanage the albatross of the savings and loan bailout, but likewise we cannot abdicate responsibility because this is a matter of huge consequence for the American people.

Clearly, the bailout process is not going smoothly. The cost keeps going up even though we have to date given the administration every dime they have asked for. I don't know anyone who believes that the assets are being sold off at a rapid enough pace.

So I ask you Mr. President, how can we in good conscience, vote this enormous sum of money—$30 billion, when we know that the process is not proceeding in an orderly fashion. And how can we ask the American people to foot the bill for a bailout that seems to have no end.

Senator HARKIN's amendment is a responsible approach to funding the RTC. In the end, the Senator's approach may actually reduce the taxpayer's bill by several billions of dollars. I believe Senator HARKIN's approach makes a great deal more sense than continuing to fund a process that we all know is fundamentally flawed.

Mr. LEVIN. Mr. President, I will vote against tabling the Harkin-Kohl amendment, which reduces from $30 billion to $15 billion the appropriation in this bill for operation of the Resolution Trust Corporation. In addition, this amendment requires that any additional funding requests by the President for the RTC should be accompanied by his proposed options for a pay-as-you-go approach to the financing of the RTC that would minimize the cost to middle- and low-income families. I have been assured by the sponsor of the amendment that this pay-a-you-go approach to financing the RTC could include spending cuts as well as tax increases.

It has been argued that the Harkin-Kohl amendment will delay the disposition of failed S&L's and consequently increase its cost. However, this argument is wrong on two counts.

First, there is not reason why the President must wait until all $15 billion is expended before seeking additional financing. He could and should come to the Congress with a responsibile pay-as-you-go plan for the RTC as soon as possible. This plan should also include steps to improve what heretofore has been the inad-

equate management of the RTC as well as provisions on how to minimize the cost of any proposed funding plan to middle- and low-income families.

Second, a pay-as-you-go approach would save the interest costs, which will otherwise ultimately be the large bulk of the cost to the taxpayers. So, by requiring the President to propose a responsible plan on how to pay for more of the RTC operations now, the Harkin-Kohl amendment avoids increasing the ultimate cost of the S&L fiasco to the taxpayers and avoids unfairly pushing that cost off to our children and grandchildren.

Mr. LAUTENBERG. Mr. President, I am going to support the Harkin amendment because it is important that Congress keep the Resolution Trust Corporation on a very short leash.

Mr. President, the resolution of the Nation's failed thrifts is not going well. And the taxpayers have reason to be outraged. The cost continue to rise. Too many of the S&L thieves have gotten away unscatched. Assets are not being managed as well as they should be, nor is the RTC maximizing the value of those assets.

Mr. President, I also have heard over and over again from my constituents about the significant management problems that plague the RTC. People who want to bid on properties can't get information about those properties. RTC asset sales are handled poorly. And, in general, the RTC bureaucracy is perceived as unresponsive to the public that it serves.

Mr. President, it is important that we control the cost of the S&L bailout. This amendment would help us do that. Congress must closely review RTC operations and make necessary reforms. And time is of the essence. Given the enormous scope of the RTC's operation, continued inefficiencies threaten to cost taxpayers substantial sums.

By approving only $15 billion now, we would create a significant incentive for the administration to act quickly on reforms. That will reduce taxes in the long term.

Mr. President, there is language in this amendment that would require the President to detail options for raising additional revenues in a manner that does not place an undue burden on low-, moderate-, or middle-income taxpayers. Mr. President, I am concerned that one way or the other, the bill for the S&L bailout is going to be paid by average Americans, or their children, who may inherit enlarged Federal budget deficits created by the bailout.

This amendment requires the President to submit proposals on way to pay for the bail out that impose less of a burden on those people who are already bearing an unfair share of the costs. Rather than being a call for additional taxes on average Americans, this amendment calls on the administration to pursue other available revenue options—including more efficient sales of RTC assets and better collection of the billions in delinquent debts to the Federal Government—that could reduce the burden of the S&L bailout on average taxpaying Americans.

Mr. President, $30 billion is too big a check to write now. We should spend less today, and, by encouraging reforms of the RTC, hopefully spend less over the long term.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the motion to table the amendment of the Senator from Iowa [Mr. HARKIN]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], is necessarily absent.

The result was announced—yeas 71, nays 28, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—71

Bentsen	Ford	Moynihan
Bingaman	Fowler	Murkowski
Bond	Garn	Nickles
Boren	Gore	Nunn
Breaux	Gorton	Packwood
Bryan	Graham	Pell
Bumpers	Gramm	Pressler
Burdick	Hatch	Pryor
Burns	Hatfield	Reid
Byrd	Heflin	Riegle
Chafee	Heinz	Rockefeller
Coats	Helms	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Craig	Kassebaum	Sasser
Cranston	Kasten	Seymour
D'Amato	Kennedy	Simpson
Danforth	Kerrey	Smith
DeConcini	Lott	Stevens
Dixon	Lugar	Symms
Dole	Mack	Thurmond
Domenici	McCain	Wallop
Durenberger	McConnell	Warner
Exon	Mitchell	

NAYS—28

Adams	Harkin	Mikulski
Akaka	Hollings	Robb
Baucus	Jeffords	Sanford
Bradley	Kerry	Shelby
Brown	Kohl	Simon
Conrad	Lautenberg	Specter
Daschle	Leahy	Wellstone
Dodd	Levin	Wirth
Glenn	Lieberman	
Grassley	Metzenbaum	

NOT VOTING—1

Biden

So the motion to table the amendment (No. 23) was agreed to.

Mr. GARN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 13

The PRESIDING OFFICER (Mr. LIEBERMAN). The pending question is the amendment offered by the Senator from New York [Mr. D'AMATO].

Mr. CHAFEE addressed the Chair.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the pending D'Amato amendment be set aside to consider my amendment.

Mr. RIEGLE. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER. The Senator from Michigan is correct. Will Senators please clear the aisles? The Senate is not in order and will not proceed until it is in order.

The Senator from Rhode Island.

Mr. CHAFEE. I renew my unanimous-consent request that the pending amendment be set aside so we might proceed to my amendment.

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

AMENDMENT NO. 24

(Purpose: To amend the Federal Deposit Insurance Act, the Federal Credit Union Act, and the Crime Control Act of 1990 to strengthen prohibitions against individuals convicted of financial institution crimes, and for other purposes)

Mr. CHAFEE. I send an amendment to the desk on behalf of myself and Mr. PELL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for himself and Mr. PELL, proposes an amendment numbered 24.

Mr. CHAFEE. 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 new title:

TITLE —FINANCIAL INSTITUTIONS FRAUD PROSECUTION ACT

SEC. 1. SHORT TITLE.

This title may be cited as the "Financial Institutions Fraud Prosecution Act of 1991".

SEC. 2. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.

Section 19(a) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)) is amended—

(1) in paragraph (1)(A)—

(A) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(B) by inserting after clause (i) the following:

"(ii) become or continue to be employed in any capacity by an insured depository institution;"; and

(2) in paragraph (2)(A)(i)(I) by inserting "1517," after "1344,".

SEC. 3. FEDERAL CREDIT UNION ACT AMENDMENTS.

Section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d)) is amended to read as follows:

"(d) PROHIBITION.—

"(1) IN GENERAL.—Except with prior written consent of the Board—

"(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

"(i) become, or continue as, an institution-affiliated party with respect to any insured credit union;

"(ii) become, or continue to be, employed in any capacity by an insured credit union;

"(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

"(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

"(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

"(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragrpah is—

"(i) an offense under—

"(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, or 1956 of title 18, United States Code; or

"(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

"(ii) the offense of conspiring to commit any such offense,

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

"(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

"(i) IN GENERAL.—On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

"(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

"(3) PENALTY.—Whoever knowingly violates paragraph (1) or (2) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.".

SEC. 4. CRIME CONTROL ACT AMENDMENTS.

(a) IN GENERAL.—The Crime Control Act of 1990 (P.L. 101-647, 104 Stat. 4789 et seq.) is amended—

(1) in section 2537(b)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) provide technical assistance and other appropriate resources to State prosecutors, State officials authorized to prosecute, or other law enforcement officials engaged in cases of fraud involving the collapse of any private deposit insurance corporation;"; and

(2) in section 2539(c)(2)—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting a new subparagraph after subparagraph (F) as follows:

"(G) the Internal Revenue Service;".

(b) REPORT.—Section 2546 of the Crime Control Act of 1990 (P.L. 101-647, 104 Stat. 4885) is amended by adding at the end the following new subsection:

"(c) FRAUD TASK FORCES REPORT.—In addition to the reports required under subsection (a), the Attorney General shall submit a report to the Congress not later than March 1, 1992, containing the findings of the financial institutions fraud task forces established under section 2539 as they relate to the collapse of private deposit insurance corporations, together with recommendations for any regulatory or legislative changes necessary to prevent such collapses in the future.".

Mr. CHAFEE. Mr. President, let me explain the amendment, if I might. This amendment to the Resolution Trust Corporation Funding Act is designed to protect depositors and the Federal Government from criminal abuses at the Nation's financial institutions. This act, the Financial Institutions Fraud Prosecution Amendment, would strengthen penalties against individuals convicted of financially related crimes and allow the Justice Department to provide modest technical assistance to States that are prosecuting fraud-related crimes.

Criminal activity has been a serious problem in the financial services community. The Justice Department estimates that 50 percent—50 percent, Mr. President—of the Nation's insolvent savings and loan institutions were victimized by fraud. In my home State of Rhode Island, 45 banks and credit unions were closed due to the collapse of a scandalously mismanaged private deposit insurance fund.

Independent examinations are underway to determine the origin of Rhode Island's financial institutions crisis. But it is believed fraud and criminal activity contributed substantially and significantly to our State's worst financial crisis since the Great Depression.

The shameful truth is too many of the directors, the managers, and the employees of our financial institutions have engaged in criminal activity for their own personal enrichment.

Mr. President, we have all heard about corrupt financial executives leading flamboyant lifestyles with jet aircraft and multiple vacation homes. In Rhode Island, one prominent credit union official has apparently fled the country with $13 million—$13 million—stolen from depositor accounts. His actions contributed significantly to our State's banking emergency, but it also reveals a web of deceit at institutions insured by the Rhode Island Share and Deposit Indemnity Corp., so called RISDIC, the State's private deposit insurance fund.

Data from the financial services institutions is alarming: 200 banks failed in 1990; the thrift industry is weakened as a result of the S&L crisis; credit unions have collapsed in our State.

The financial industry's competitive challenges are stiff enough without adding the worry that internal fraud will further undermine the stability of our banks and credit unions.

After a great deal of thought, Mr. President, I have decided to propose this amendment which builds upon—I would note this—it builds upon stiff fraud-related penalties which were approved as part of the 1990 crime bill. As in that bill, this is a tough comprehensive approach to dealing with abuses inside the financial institutions industry. It expands modestly and clarifies several provisions of last year's crime bill.

Let me briefly describe the major components of this amendment. Under my amendment, individuals convicted of fraud crimes relating to the collapse of a credit union or a private deposit insurance fund will be barred from employment at a federally insured financial institution for a minimum of 10 years. This provision could only be waived by a court at the request of either the FDIC or the National Credit Union Administration. This component, I might say, is identical to the current law which relates to persons convicted of bank fraud.

In other words, when we passed the 1990 crime bill, we had a provision in there that people convicted of fraud at banks could not go to work for an FDIC-insured financial institution for a minimum of 10 years. My legislation extends that same prohibition to those who are convicted of fraud relating to the collapse of a credit union or of a private deposit insurance fund similar to the one that existed in the State I come from.

A second part of my amendment—and this is very important, Mr. President—would expand the Justice Department's newly created financial crime unit to allow State prosecutors to benefit from the Federal Government's expertise in prosecuting financial-institutions-related fraud cases.

Now that is a lot of words. What does it mean? It means that since 1988 the Justice Department has prosecuted—and this is a conservative estimate, since 1988, that is only 2½ years ago—the Justice Department has prosecuted 10,000 fraud and embezzlement cases, a figure I must say I found astonishing but I am told by those that know that this is on the low side.

The Department's accumulated knowledge could be a valuable resource to State officials who may be prosecuting large-scale financial fraud cases for the first time.

The State I am from is a small State. Our prosecutors do not have experience in these complicated financial fraud cases. One Rhode Island prosecutor told me a 30-minute telephone call and some technical guidance from the Justice Department attorneys could save 6 months of field work at the local level.

Though the experience gained by our Justice Department, they have learned a lot. You do not prosecute 10,000 cases without learning a lot. That would be extremely helpful to the local prosecuting officials. So I ask this be made available.

The final portion of the amendment would expand the Justice Department's interagency task force to gauge the impact upon the Federal Government of the collapse of a private deposit insurance fund.

The January collapse of Rhode Island's private deposit insurance fund

was the Nation's third. We have had three of these, Mr. President. In 1985, one collapsed in Ohio. In 1985, one collapsed in Maryland. In 1991, we had the collapse of the one in Rhode Island.

Independent examinations into the origins of these financial institutions crises have revealed that fraud and criminal activity contributed significantly to these financial disasters.

Alarmingly, private insurers continue to operate in at least 20 States. If there is one message I could send out to all the States that have these private deposit insurance funds: Beware and check those funds just as should have been done in my State based upon the previous experience in Ohio and Maryland.

The Federal Government needs to quantify the risks associated with private deposit insurance funds. My amendment would require the Justice Department to assess the risks to our Nation's economy and to propose any Federal legislative initiatives that might limit our Federal Government's exposure in these matters. Now, you might say, there is no Federal exposure. Well, who knows?

The amendment directs the Justice Department to lead an interagency evaluation of private deposit insurance funds. The report and its accompanying evaluation would have to be submitted to Congress within 12 months of the enactment of the bill to which this amendment would be attached.

The President, this is a modest yet important amendment that has been endorsed by the National Credit Union Administration.

At this time, Mr. President, I will ask unanimous consent that a letter endorsing this amendment from Mr. Robert M. Fenner, general counsel of the National Credit Union Administration, dated February 27, 1991, be printed in the RECORD. I shall just read a portion of it.

This is to confirm that the National Credit Union Administration supports your proposals set forth in draft bill S. 419 as forwarded by Mr. Rogers.

I ask unanimous consent that the letter be printed in the RECORD.

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

NATIONAL CREDIT UNION ADMINISTRATION,
Washington, DC, February 27, 1991.

Hon. JOHN H. CHAFEE,
U.S. Senate,
Washington, DC.

DEAR SENATOR CHAFEE: This is to confirm that the National Credit Union Administration supports your proposal, set forth in draft bill S. 419 as forwarded to us by Mr. Rogers of your staff, to amend Section 205(d) of the Federal Credit Union Act in order to clarify and strengthen the prohibiton against individuals with criminal records participating in the affairs of insured credit unions.

As I discussed with Mr. Rogers, we recommend that proposed paragraph 205(d)(1)(A)(iii) be deleted, inasmuch as credit unions, as cooperatives, are not subject to outside ownership and control.

Thank you for your consideration in seeking NCUA's views.

Sincerely,

ROBERT M. FENNER,
General Counsel.

Mr. CHAFEE. Mr. President, furthermore, this amendment has been favorably reviewed by the U.S. attorney in Rhode Island. It builds upon existing law.

We are not plowing some new ground here. We are enlarging upon the crime bill of 1990. It would protect depositors across the Nation by ensuring that those convicted of fruad-related offenses will not have the opportunity to return to a career in the financial services industry for a long time.

You might say, well, the individual has been adequately punished. Why add this further punishment?

We found it wise to do that in connection with federally insured deposits—FDIC insured entities. We had a period of 10 years. We have a provision in there for seeking an excuse from that if the individual prevailed upon the FDIC to support such an effort.

The trouble is, with the mobility of individuals around the United States, we could easily have a situation where an individual could have been convicted of a fraud in connection with an action in one State who moves across the country. After several years go by he could go to work for another financial institution, and without that institution knowing of the background of the individual. This makes it a crime to do that in connection with credit unions or with the State insurer.

I urge my colleagues to join me in support of this amendment. Frankly, it is my hope, Mr. President, the managers of the bill will accept the amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island [Mr. PELL].

Mr. PELL. Mr. President, I congratulate my colleague from Rhode Island for introducing this amendment. It is an amendment that is needed. I think so far we all have been moaning and groaning about the anguish of people who suffered from the credit unions and the banks collapsing, but we have not done much about it. We have been sort of toothless.

But this amendment will mean that, instead of being toothless, we will be putting teeth in these emotions. And the people who are responsible for the misery and the anguish of so many of our constituents would be properly punished, not punished for the sake of punishment, an eye for an eye and a tooth for a tooth, but to discourage actions like this in the future, actions which could easily happen again at another time.

This amendment is treating credit unions and banks pretty much alike. In our part of the country, credit unions are, virtually, the banks. Also, it is taking advantage of the know-how of the Justice Department, of the fact that they have prosecuted 10,000 cases, and utilizing their knowledge to bring in the Federal Government.

Speaking for my part of the country, that is a wish our people have, very much indeed. This is a good amendment. I hope it will be approved.

The PRESIDING OFFICER. The Senator from Rhode Island [Mr. CHAFEE].

Mr. CHAFEE. I thank my distinguished colleague for his comments. As I noted, he is a cosponsor of this.

The point I want to make is the point my distinguished senior colleague makes. This is a three-part amendment. Yes, it deals with the provision of not being able to be employed by a financial institution within 10 years after having been convicted of fraud. This is not some little minor charge that goes against an individual. This is fraud: stealing from depositors. This is one part.

But the other parts of the amendment are of equal importance. For example, the point my distinguished senior colleague made about the Justice Department's expansion of its newly created financial crime unit. We come from a small State. The total population of Rhode Island is 1 million people. So we do not have within our Justice Department—our State attorney general, or within our U.S. attorney's office—the expertise to handle these cases. This would provide that that expertise from the Justice Department would be available to our State prosecutors.

The final part would mean that there would be an assessment made across the country about the strength of these private insurers, or these State insuers, and the risks that might come to our Nation's economy if there were further problems, as has been shown in our State.

Just to show the seriousness of this, and I say, we have 1 million people in our State; we have 150,000 depositors who have not been able to get their money out of institutions since January 1. There are 150,000 people who cannot get to their accounts. Why? Because of fraud and chicanery and duplicity and ineptness by those who are managing both some of the institutions and the statewide insurer. That is serious business.

I do not think any of us can realize the full impact of having our savings tied up in institutions, or our checking account, where we cannot get at it for payments on our mortgage, cannot get at it for payments on a house, cannot get at it for payments pursuant to an agreement to purchase—whether it is property, or whatever it might be.

So I hope the managers will support this amendment.

The PRESIDING OFFICER. The Senator from Utah [Mr. GARN].

Mr. GARN. Mr. President, first let me summarize the Chafee amendment, as I understand it.

It would amend the 1990 Crime Act to make clear that individuals convicted of certain crimes cannot participate in the affairs of insured credit unions for a minimum of 10 years unless the court grants an exception. This is currently the law with regard to participation in insured banks and S&L's.

In addition, the amendment would clarify that the ban on participation includes a ban on employment with the insured institution.

The amendment would also require the Department of Justice to provide its technical expertise and appropriate resources to State officials prosecuting cases of fraud in connection with the collapse of private deposit insurance systems, add the IRS to the interagency task force set up by the crime bill, and require the task force to broaden its recommendation to help prevent such collapses in the future.

I would say at the outset, it is hard to disagree with what my friend from Rhode Island is attempting to accomplish because it does make sense to have uniform rules governing when people with criminal convictions can participate in the affairs of federally insured institutions. However, changes to the crime bill should be more fully explored and coordinated with the Department of Justice and the FDIC before proceeding to avoid inadvertent interference with ongoing proceedings.

So while I do not object to what the Senator is trying to accomplish, I do have some problems with not fully investigating the implications of the bill and coordinating that with the FDIC and the Department of Justice.

The second reason is that I think it is clear to everyone that the chairman and I are attempting to keep what we consider an emergency funding bill clean of amendments, even if they are meritorious. In the House of Representatives last week, in the House Banking Committee, I should state, the bill to provide this funding was loaded up with amendments, and therefore in the final vote it was defeated.

It gets back to the arguments both the chairman and I have been making for several days, that while we may be sympathetic with many of these proposals that are meritorious, we do not want to delay further the emergency funding that is necessary for the RTC to continue the closure of some of these brain-dead institutions.

I hope the Senator from Rhode Island will understand our position, and that my opposition is not one of substance at this time, but a consideration of going through the committee process and examining this, along with other proposals, which we certainly intend to do.

The Senator from Nebraska has a proposal that I may agree with, having had proper hearings, to change the structure of the RTC board.

But I do not feel that these amendments should be added on an emergency funding bill. This and other amendments should be given due consideration, and many of them certainly are meritorious.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan [Mr. RIEGLE].

Mr. RIEGLE. Mr. President, we always take seriously amendments that are brought by Senators on matters of this kind. So I am going to say to the Senator from Rhode Island the fact he is bringing this forward and has a deep interest in it carries great weight with me as chairman of the committee. As the ranking member from Utah just said, I think there is a lot of merit in what he is talking about. I think it takes some discussion, however, and some work. I think the Department of Justice and other parties of interest would have to be involved in a formulation that we would know would be correct and would work.

Let me suggest to the Senator from Rhode Island, and to his colleague, also, Senator PELL, who spoke earlier, that we have a hearing scheduled in the Senate Banking Committee on April 11—that is less than a month away—precisely for the purpose of being able to have Members come in and present recommendations for changes in the law as it relates to the aftermath of the savings and loan problem.

I would like to suggest to the Senators from Rhode Island—and I know they have a current problem with the credit union situation in their State—I think what we ought to do is invite them to come in at that time and let us hear a formal presentation. Let us also invite comments from other interested parties so that we have a variety of viewpoints and information.

I say to the Senators that I am interested in what they are suggesting here. At the same time, I do not think we can deal with it properly today in this context. I say that because this bill is very much overdue. This is a matter that ought to have been handled late last year. The Senate acted on it, as my colleagues may know, in the closing days of the session. It was not enacted. So the RTC is not able now to shut down failed institutions because they do not have enough money. As a result, the costs are rising each day that ultimately have to be borne by the taxpayers.

I would like to suggest that they allow us to move ahead with this funding bill now and leave it clean of amendments of this kind, however meritorious they might be. Let us use this opportunity on the 11th to have them present this idea to the Banking Committee. We will decide at that time what we can do with it and proceed in that fashion.

The PRESIDING OFFICER. The Senator from Rhode Island [Mr. CHAFEE].

Mr. CHAFEE. Mr. President, I want to thank both the distinguished chairman of the committee and the ranking member for their thoughtful comments on the amendment I proposed.

As the chairman of the committee pointed out, this is a matter of deep concern to both Senators from Rhode Island. I think the proposition he made is a fair one for a variety of reasons. One, we may not be rocket scientists, but we can count. The last vote was 71 to 28, so it does not appear these amendments are going to be approved. That is a first point.

The second point is I think the Senator makes a very valid point; that is that this bill has to move, and I am anxious to get it moving because all of us represent taxpayers. I hear every day's delay of this measure amounts to $7 million, or some figure like that.

Mr. RIEGLE. $7 to $9 million a day.

Mr. CHAFEE. We better stop the talking quickly because it is running a couple hundred thousand dollars a minute, I guess.

As I understand, the proposal by the chairman of the committee is as follows: That on April 11, there will be a series of measures considered by the committee and that he is agreeable that this amendment, with its three parts, be part of that consideration.

Mr. RIEGLE. That is exactly right. I invite the Senators to appear before us on that day and present it so we can discuss it before the committee.

Mr. CHAFEE. That will be fine. Let me ask the Senator another question. Will he at that time also arrange to hear, for example, from some of the entities he mentioned, like the Justice Department, or would he solicit a comment? In other words, what we would really like to see is, in effect, a markup on the legislation.

Mr. RIEGLE. I do not know that I can commit to having a markup on that day because we are going to take up a variety of proposals including: The one the Senator has brought forward, and testimony from the Senator from Nebraska in a different area. I do not know how many others will come in.

But along that line, may I make this suggestion? I think it would be appropriate, and I would be supportive of an effort initiated by the Senators who sponsored this amendment to send this amendment to the Justice Department and ask them for a response. I think that is reasonable to ask that the response be available to us by the 11th of April. There may be other parties of interest who also might be asked for comment so that that can be available to us. It will be available to you and to us so that we have that as a reference

at that time. We have some lead time here.

We will certainly endeavor to seek opinions we think we need to have. I think theirs is one we ought to have. I think it would be appropriate for the Senators to send it on over to them and ask them how they feel about it. It would be good to have their endorsement.

Mr. GARN. Will the Senator yield for suggestion? I suggest that the Senator, on the basis of this colloquy, be willing to withdraw his amendment; that he reform it in a bill, and submit it for referral to the Senate Banking Committee so we would have an actual piece of legislation before us on which to conduct a hearing.

Mr. CHAFEE. Mr. President, first, I want to thank the two distinguished Senators handling this legislation. That is agreeable to me, and I am sure it is agreeable to my colleague. We will submit this in the form of a bill. It will be referred to the Banking Committee, and we will seek the Justice Department's comments. We have the comment already from the National Credit Union Administration.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I think this proposal is eminently fair. I ask it be accepted and the amendment be withdrawn.

Mr. CHAFEE. Mr. President, I ask that the amendment be withdrawn.

The PRESIDING OFFICER. The Senator has that right to withdraw his amendment, and it will be withdrawn.

The amendment (No. 24) was withdrawn.

Mr. RIEGLE. Mr. President, I am prepared to yield to the Senator from Nebraska, but I want to say to the Senators from Rhode Island that I appreciate the initiative that they have taken here. I appreciate also their willingness to handle it in this fashion so that this bill can go forward on an expedited basis. We want to work with them, and I will work with them. I want to repeat that I think this is an important issue they have raised. So I look forward to handling it in the fashion we just described.

Mr. CHAFEE. I thank the Chairman.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. KERREY].

Mr. KERREY. Mr. President, I ask unanimous consent that the pending amendment be laid aside so I may offer an amendment.

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

AMENDMENT NO. 25

(Purpose: To amend the Federal Home Loan Bank Act to restructure the Resolution Trust Corporation Oversight Board and Board of Directors into a single governing entity)

Mr. KERREY. Mr. President, I send an amendment to the desk on behalf of myself, Senators BUMPERS, PRYOR, EXON, RUDMAN, MOYNIHAN, and DASCHLE, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska [Mr. KERREY], for himself, Mr. BUMPERS, Mr. PRYOR, Mr. EXON, Mr. RUDMAN, Mr. MOYNIHAN, and Mr. DASCHLE, proposes an amendment numbered 25.

Mr. KERREY. 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 the bill, add the following:

SEC. . MANAGEMENT OF THE RESOLUTION TRUST CORPORATION.

(a) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by striking paragraphs (1) through (3) of subsection (a) and inserting the following:

"(1) IN GENERAL.—There is established the Board of Governors of the Resolution Trust Corporation.

"(2) FUNCTION.—The Board of Governors shall oversee and manage the Resolution Trust Corporation (hereinafter in this section referred to as the 'Corporation'). The Board of Governors shall be an 'agency' of the United States for the purposes of subchapter II of chapter 5 and chapter 7 of title 5, United States Code.

"(3) MEMBERSHIP.—

"(A) IN GENERAL. The Board of Governors shall consist of 9 members as follows:

"(i) 5 independent members appointed by the President, by and with the advice and consent of the Senate, from among individuals with experience in banking, finance, real estate, and business management. Nominations to fill such positions shall be refered to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(ii) The Secretary of the Treasury.

"(iii) The Chairman of the Board of Governors of the Federal Reserve System.

"(iv) The Secretary of Housing and Urban Development.

"(v) The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation.

"(B) POLITICAL AFFILIATION.—Not more than 3 members appointed pursuant to clause (i) of subparagraph (A) shall be members of the same political party. No independent member of the Board of Governors shall hold any other appointed office during his or her term as a member.

"(C) CHAIRPERSON.—The Chairperson of the Board of Governors shall be designated from among the appointees under clause (i) of subparagraph (A) at the time of his or her nomination to the Board of Governors by the President. The Chairperson shall have the business experience necessary to govern the orderly distribution of the assets held by the Corporation.

"(D) QUORUM REQUIRED.—A quorum shall consist of 3 members of the Oversight Board appointed pursuant to subparagraph (A)(i).

"(E) TERM OF OFFICE.—The term of office of the members of the Board of Governors appointed pursuant to subparagraph (A)(i) shall be 5 years. Any vacancy in the Board of Governors shall be filled in the same manner as the original position was filled.".

(b) PROMPT APPOINTMENT.—The President is urged promptly to appoint all members of the Board of Governors of the Resolution Trust Corporation.

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act is amended—

(A) by striking "Oversight Board" each place it appears and inserting "Board of Governors"; and

(B) by striking subsection (b)(8).

(2) REFERENCES IN OTHER LAWS.—Any reference in any other provision of law to the Oversight Board of the Resolution Trust Corporation shall be deemed to be a reference to the Board of Governors of the Resolution Trust Corporation.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the date of enactment of this Act, except that—

(1) the Oversight Board of the Resolution Trust Corporation as constituted immediately preceding such date shall retain its power and authority as in effect on such date until such time as 3 of the nominees to be independent members of the Board of Governors have taken office;

(2) any individual nominated to be a member of the Oversight Board of the Resolution Trust Corporation shall be deemed to have been nominated to be a member of the Board of Governors of the Resolution Trust Corporation; and

(3) the conflict of interest regulations applicable to members of the Oversight Board shall apply to members of the Board of Governors.

(e) COMPENSATION OF BOARD OF GOVERNORS.—

(1) CHAIRMAN.—Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:

"Chairman, Board of Governors, Resolution Trust Corporation.".

(2) MEMBERS.—Section 5313 of title 5, United States Code, is amended by striking "Oversight Board" and inserting "Board of Governors".

Mr. RIEGLE. I wonder if the Senator will yield to me for 1 minute.

Mr. KERREY. Yes, I yield.

Mr. RIEGLE. Mr. President, I have had other Senators come to me with amendments they are going to offer later or anticipate offering later. Senator SPECTER is coming with one on a different subject matter he wants to offer.

Might I inquire of the Senator from Nebraska if he has a thought now as to how much time might be needed and maybe we can structure a time period. I want to certainly be adequate to his needs, but this is just for scheduling purposes so that I can kind of guide other Senators as to when they might be able to come over and offer theirs as well.

Mr. KERREY. I appreciate that. I do not think, Mr. President, that this will require much more than 30 to 45 minutes on my side. The dilemma is there are Senators who want to speak who are not on the floor. I am sure they are going to come to the floor to speak. I am willing, if they do not make it here, to cutoff time and get to a vote. I do not want to tie this up. But I am reluctant to agree to a time agreement at this point. It seems to me that an hour

is probably all the time it is going to take, but I am just not certain.

Mr. RIEGLE. What if we were to do this. If the Senator is not comfortable with it, fine. I will understand. What if we were to take 1½ hours equally divided. If we need all that time, we will take it. If not, we will yield it back. If it gets to that period of time and things are going hot and heavy, if the Senator wants an extension, we will work that out. But how about if we were to seek a unanimous-consent agreement for 1½ hours equally divided with that understanding?

Mr. KERREY. I would agree to that.

Mr. RIEGLE. Mr. President, I will then make such a request. I ask unanimous consent that 1½ hours be provided for this amendment, equally divided.

The PRESIDING OFFICER. Is there objection? Hearing none, that will be the order.

Mr. RIEGLE. I am going to ask unanimous consent as well that that preclude second-degree amendments because I think that will keep the Senator's amendment in the form he is presenting it.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator from Nebraska has the floor.

Mr. KERREY. I thank the Chair and I thank the distinguished Senator from Michigan.

Mr. President, I want to make certain that the amendment I just sent to the desk had recorded all the additional Senators on it. I had listed Senator PRYOR, Senator EXON, Senator BUMPERS, Senator MOYNIHAN, Senator DASCHLE, and Senator RUDMAN.

The PRESIDING OFFICER. The Senator is correct.

Mr. KERREY. I thank the Chair.

Mr. President, I have been to the floor a number of times in the last week or so talking about the need to make some changes in the Oversight Board. I will not at this moment go into much greater detail, although I intend to do so later.

This is a very simple amendment. It is based upon an observation, again a rather simple observation, that the current oversight arrangement simply is inadequate, not as a consequence of personal inadequacies of the people who are on the Board but simply because of the other things they have to do.

The Chairman of the RTC Board, for example, Mr. Seidman, is actively involved in a very difficult problem of trying to figure out how he is going to recapitalize the FDIC. That in itself would tie up the average person in a full-time way. That in itself should command full-time attention.

The Chairman of the Oversight Board, Treasury Secretary Brady, is also involved in trying to figure out how we are going to reform our banking system. He has a very complicated and detailed proposal to address that. That in itself, a very important problem, would be a full-time task, Mr. President.

So what I am suggesting here is not that we should look to try to pin the blame on the administration for doing a poor job but, instead, to look at the organization itself.

I know, from talking to colleagues, there is a great deal of consternation about this vote. One of the arguments offered in opposition to the previous amendment was that we do not want to come back here and vote this cash in a repetitive fashion. The House of Representatives has demonstrated their reluctance as well with a voice vote. Some here suggest that perhaps would be the best approach as well.

The public itself, Mr. President, has grown impatient. People have filed with all of us all sorts of anecdotal pieces that come together, I think, in a persuasive fashion to conclude that if we hold hearings in April and if we make some structural reform sometime this year, two things will happen. I find both of them to be inadequate. One, we may actually block consideration of both Mr. Seidman's proposal and Secretary Brady's proposal to, one, recapitalize the FDIC and, two, to reform the banking system.

The second concern I have, Mr. President is that there will be a great deal of time lost between the moment of consideration now and the enactment of whatever the committee itself hears in April. As I said, I think there is an ample amount of evidence to cause us all, if we look at this thing objectively, in a nonpartisan way, to say what we need is a full-time policy board.

Mr. President, the Senator from New Hampshire has been good enough to hang around the Chamber. He has been with me on this amendment from the beginning. I know that he has a hearing to attend. He has asked for 2 or 3 minutes to speak so he can get to that hearing, so I yield to him at this time.

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

Mr. RUDMAN. I thank the Chair, and I thank my good friend from Nebraska.

Mr. President, let me be very brief because the Senator from Nebraska has spoken to this in great detail.

I have the greatest respect for not only the knowledge of this issue but the devotion to the issue of the chairman, the Senator from Michigan [Mr. RIEGLE], and my good friend from Utah [Mr. GARN]. Unquestionably, I would not want to argue the details of the RTC with them because they truly have more knowledge of it, as does their committee, and I am not on that committee.

There is no question that the Senator from Utah was correct yesterday when he made the comment that we probably would be well advised to have hearings and decide about a reconstituted board. I accept that as probably being the better way to do things. But there are occasionally times around here when you do not do things the better way; you do them based on instinct.

I have had a sense, Mr. President, that we have some extraordinarily talented people on this board at the present time. Unfortunately, like most extraordinarily talented people in this city, they have enormous responsibilities. The Secretary of the Treasury is faced with problems in the economy that deal with all banks, with other financial institutions. He is presently devoting a great deal of time to what he considers a high priority, and that is essentially a reconstruction, if you will, of the entire financial services industry.

The Secretary of HUD is very busy; he is on the Hill all that time. Just this morning there are more stories about his confrontation with committees on some of the policies at HUD.

That is certainly true of the chairman of the Fed, Alan Greenspan, and other public members.

I have a sense, Mr. President, that there comes a time when you have to look at something based on the practicality. The practicalities here are that this Congress, and particularly the Banking Committees, have done an extraordinary job in reacting to a crisis in this country and I think have done a first-rate job. I have supported them right down the line, as I will support them on every other tabling motion they have today, as I did a few moments ago on the first one. But I have a sense that with the RTC, it is time to have a management that devotes itself totally to this particular subject. That is very appealing to this Senator. It is also very appealing to have more public members than Government members.

The saving grace of this amendment, as I told the Senator from Nebraska when he spoke to me several months ago about this, is that these will be Presidential appointees confirmed by the Senate. So the only difference will be that these will be people whose only Government service will be to devote themselves to this crisis, which could cost the taxpayers untold billions of dollars. I will not say how many because nobody knows. It is a moving target.

So I want to thank the Senator from Nebraska for offering the amendment. I am glad to join him in it. I agree totally in advance with statements by my good friend, the chairman and the ranking member, that hearings might be better. They well might be. But I happen to believe that to have a new board constituted does not in any way detract from the ability of their performance. It more directs itself to the fact that they do not have the time.

I remember—and I will close on this, Mr. President—someone once coming to a commission meeting in the State of New Hampshire, which was a very important commission addressing some very important subjects, who stated to the chairman as the first organization meeting started—he was a very highly thought of individual in our State—he was there not because of his ability but because of his availability. I would say that in this particular case we need people who are both able and available. I am afraid public members are not as available as they ought to be most of the time through no fault of their own.

I thank the Chair and I yield the floor.

Mr. RIEGLE. Will the Senator yield for just a moment?

Mr. RUDMAN. Yes.

Mr. RIEGLE. I would like to engage him on this issue because I respect his opinion. I thank him for his kind comments about the work of the committee and personal comments.

As I understand the amendment—and I am open to changes here. I hope we have made clear that we are open to structural changes that may make sense because these things almost are never right the first time, and sometimes not the second or third time. It is a fair question to put on the table.

As I understand the amendment it would retain all of the existing board members, including Chairman Greenspan, Secretary Brady, and Secretary Kemp. It would add the FDIC Chairman. I see some merit in that although he is down a notch and actually runs the RTC Board. It would add three more independent members, and one of the independent members would become the chairman. You are augmenting the same group and creating a greater measure of independence, presumably through the chairmanship being invested in an independent member.

Mr. RUDMAN. I believe there are five board members who would be Government members—nine members, five public and four Government members under this amendment.

Mr. RIEGLE. Yes. That would be with the FDIC Chairman being added at the same time. You tip the balance in that fashion. It is fair to say all of the independent members of course are selected by whatever administration happens to be in power.

But it was very interesting when the Bush administration came forward with this proposal in the beginning. We had Secretary Brady up before the committee. He felt very strongly about this structure. I asked many of these same questions. What was the administration's thinking? What did they have in mind? What was their purpose for doing it this way?

I am paraphrasing now what I remember of his reactions, but what I remember him in effect saying was that the Bush administration put forward a reform proposal completely revising the industry and that they accepted the responsibility to get it done. They both accepted and wanted the political accountability, political in the best sense of the word—that if this was going to be their baby and their cleanup they wanted to be sure that it was done in a manner in which they could oversee it, and in the end they would take the responsibility, good or bad for the job done.

If it were more diffused, they would be uncomfortable in being more removed from it because it was such a serious problem that demanded such intense effort. They were quite willing to accept the laurel wreath or the brickbats at the far end of it once it was done. That was the theory advanced.

One can argue the pros and cons of that. Maybe we are enough further down the line now, as you say, that it is time to rebalance that board, and by a 5-to-4 split go to independent member balance. They have not recommended that. They have not asked for that.

The Secretary of the Treasury expressed his views quite clearly at the outset, and we accepted that design. I should also note that chairman Seidman accepted this design. We accepted the enginering design because they thought they could implement best. But I would want to say are we far enough down the track now, do you think the thing is well enough underway in terms of the cleanup effort? After all the RTC is an organization that is arguably bigger than Citicorp. It is the biggest organziaiton of its kind existing in this country, albeit from pretty much a cold start. It has had a lot of growing pains.

I would want to ask Secretary Brady and others: Have we now moved to a point where you are satisfied with the process? Or, are you willing to draw back and take a different position with respect to control of the oversight board? In a sense the administration has both the responsibility to do it and is accountable for it.

Mr. RUDMAN. I will respond very briefly. I think the chairman raises an excellent point. I think the problem is that, as it was originally put together, it was very well conceived but I think although it was well conceived it has not been well executed for a number of reasons. I do not want to point the finger. There are enormous problems.

The saving grace it seems to me to the argument that the Secretary might make—I do not know what he would say, a friend of the chairman's and a friend of mine. I have the utmost respect for the Secretary. He might well take the same position he took originally which is not unusual in this city because generally speaking we have some turf consciousness of certain areas. That explains the way things happen as well as logically in some cases.

Let me just make this point. The administration would still have the ultimate control because it is the President who would appoint these members. They suffer the confirmation of the Senate.

I would say if the Secretary were here and testifying, if this were a hearing, I would say to him, look, there are some extraordinary people in this country in the financial community, I will not mention names, but there are names known to all of us; in the academic community, people who retired from the banking community still with extraordinary vigor and much to contribute who if selected by the President because he had confidence in them, and still with the board constituted with four rather heavyweight Government members hardly would get it beyond the control and the ambit if you will of the administration.

It is an excellent point the Senator makes, but I think it is dealt with in the amendment. If you started having the Senate or the House appoint these people, which would have doubtful constitutionality—if in fact you did that, it seems to me the President would still have the ultimate control.

That is why I support the amendment because as the Senator just said this corporation is bigger than Citicorp. I think it needs a full-time board. They need some fresh blood on the Board. I am not worried about the administration losing control because I think they have control through the nomination process.

Mr. RIEGLE. If the Senator will yield further, on my time, the Senator may very well be right. My mind is open on that issue.

As it is now our two public members do not serve full time. They are excellent people. Bob Larson is from my State. He and Philip Jackson are serving in the public positions right now. They are working hard at it, but, they do other things. These are not full-time jobs. So in that sense this is quite a major step to contemplate shifting control of that board to independent members who in fact would serve full time and would set aside other duties.

I must say to you one of the things we have run into on the Banking Committee because we review certain nominations, is that the administration has said to us time and again they are having extraordinary difficulty getting topflight people who are willing to serve full time.

In fact, we had that same situation with the Federal Housing Financing Board where we actually had an argument because we believe the law requires full-time members. They said we cannot get good people to serve full time. They said we can get people to serve part time. That was temporarily resolved when the administration made

recess appointments of part-time people. We still believe the legislation requires full time.

So that is one of the difficulties here. Again I think this is a matter which is a very important issue. The Senator may very well be right. Maybe we ought to move in this direction at some point. I would in all likelihood sign up to do it.

But I think I want to have the Treasury Secretary, others that have been in charge under the original engineering design, come in, and respond to this. If they are for it, I would like to have them say so. If they are strongly opposed to it, mildly opposed to it, I think we ought to hear those objections. They ought to be on the record.

But I say to the Senator from Nebraska as well on a matter of this scope and scale, I think it is an appropriate issue to put on the table. We have a hearing scheduled on April 11. That is just ahead of us. It is less than a month away.

I view this as one of the main issues we are going to take up. What I would suggest as opposed to trying to settle this issue today on the floor is that we take the time—and I am not talking about a long period of time because we have set a date. I think this proposal ought to be sent to the administration. I think it ought to be sent to the administration on a bipartisan basis because I think it is significant that there is bipartisan support here for it, and ask for their formal comment. Are they prepared to endorse this? Or do they have a strong feeling to the contrary? Let us proceed in that fashion.

If we are at the point where it is time to change, whether they like it or not, after they have had a fair opportunity to react to it, comment on it, and so forth, I have no reluctance to join in an effort to bring about a change in structure if a consensus can be developed here after all sides are heard.

I must say that I feel some uneasiness, however, on a change of that scale, without going through that process. That is not to prejudice the argument either way. But I want to see us get this job done as well as we possibly can, and this may very well be a change whose time has come. But ought we not to handle it in an orderly fashion? And when I say "orderly fashion," that is, collect the parties at interest, really examine this very carefully, and then make a judgment.

After a hearing, or a presentation that the Senator may wish to make, or one others may wish to make on this, I would like to have the 21 members of the Banking Committee, the distinguished membership—we have a very strong lineup of players on both sides of the aisle—consider this, and let us see what the way of judgment is in the committee. And if it is convincing, then it is time to make this kind of a change, not only will I support that, I will be out here arguing for it. But I do not feel that we have done the work to be able to—at least in my mind—make a convincing argument that I would be prepared to live with for the rest of the time, if this is a change whose time has come.

Mr. RUDMAN. If the Senator will yield, I still have the floor. I want to thank the Senator from Michigan. I think the question of the procedural disposition of this amendment is certainly up to the Senator from Nebraska. He is author of it, and I am delighted to be a cosponsor.

The argument is a good one made by the Senator from Michigan. I happen to think that whether we vote on it today and get a strong vote, or vote on it later, there is going to be a change in the RTC Board. I think that the momentum is moving in that direction. But how we vote on it today remains to be seen.

I thank the Senator for his courtesy, and I thank the Senator from Nebraska for yielding to me.

I yield the floor.

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

Mr. GARN. Will the Senator yield for a moment before the Senator from New Hampshire yields?

Mr. KERREY. I ask the Chair if the previous comments were charged to my side?

Mr. RIEGLE. It will be charged to our side.

The PRESIDING OFFICER. Except for the initial statement of the Senator from New Hampshire, it is charged to the Senator from Michigan.

Mr. KERREY. I am glad to yield.

Mr. GARN. I appreciate that. I realize that the Senator from Nebraska has not completed his opening statement. I want to make some comments on the colloquy before the Senator from New Hampshire leaves. I say to him, and also to the Senator from Nebraska, that I am somewhat sympathetic with the Senator's position. It would make more sense to me, in concept, to have a full-time board. And even when this was first formed, I felt that way, and there were comments from me to that effect in various forums.

The problem I have in dealing with it today, even though I might end up agreeing with it, depending on how it is finally formulated and written, is that there are a number of other proposals from people who would also like to reform the RTC Board in some way, or make other changes, including this Senator. There are still some changes I would like to make that I advocated in the summer of 1989, which were not adopted then, but that, in hindsight, look even better to me now than they did then.

So if we start allowing amendments to pass that may be meritorious we prejudice others, as well. What I wish we could do in the Committee hearing on the 11th—and I would expect that 1 day of hearings would probably not be sufficient—is to consider all of them. So that we come up with not just a change to the RTC Oversight Board, but other changes that I think need to be made, whether the administration agrees or not, to make them work more efficiently.

So if we start picking and choosing on the floor, I think we have prejudiced some other meritorious proposals as well.

On the substance of this amendment, I have just one comment, to give you an idea, while I think it may be a good idea in concept, it needs to be refined. Under the Kerrey amendment, FDIC remains the agency through which the RTC operates. FDIC employees carry out the functions of the RTC. RTC itself has no employees. The amendment would remove the role of the FDIC Board in running the RTC. I do not know how you handle that, if you change that structure but the FDIC employees are still supposed to carry out RTC functions. This is a technical problem.

I am not being critical of the amendment, but as an example, do we pass something without thoroughly thinking it through, even though I might agree with the concept? So before the Senator from New Hampshire leaves, I want to point out some of the concerns that I have in adopting this or other proposals. There are some that I would like to have offered, but I have restrained myself from doing that.

I thank the Senator from Nebraska for this long interruption in his opening statement.

Mr. KERREY. Mr. President, briefly, the Senator from Arkansas requested an opportunity to speak on this amendment. Briefly, in response, the compelling need to make a change is here now. The reason I do not mind yielding, without giving an introductory statement, is because I have been making an introductory statement for some time now on this issue. It is an organizational question. It is how you organize government.

The Senator from Utah raises an interesting point, and I am prepared to argue that detail. I have not only thought it through, but I have discussed this proposal with members of the Banking Committee and others of my colleagues. It seems to me that what we have is a compelling need to address the problem now.

Mr. President, I ask unanimous consent to have printed in the RECORD an article written recently by Stephen LaBaton of the New York Times.

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

SEIDMAN'S PLAN TO BOLSTER FDIC

(By Stephen Labaton)

WASHINGTON, February 28.—L. William Seidman, the nation's senior banking regu-

lator, today proposed a $64.4 billion plan over five years that relies heavily on Government borrowing to shore up the ailing Federal program that protects deposits.

The plan to strengthen the Federal Deposit Insurance Corporation is a compromise attempt to avert the insolvency of the $8.4 billion fund without relying on taxpayer revenues or overly taxing an industry that has suffered from declining earnings over the last year. But it calls for significant increases in the amounts that banks will have to contribute to the fund to finance loans that might ultimately come from taxpayer funds.

RISING FAILURE RATE

The rising rate of large bank failures has left the bank insurance fund at its lowest level to deposits since the creation of the program 57 years ago during the Great Depression. This has raised concerns that the fund could be insolvent by the end of the year. If that were to happen, deposits of up to $100,000 would continue to be protected, but the regulators would have to turn to taxpayer funds to bail out future bank failures.

"To the extent that is any doubt about the repayment, this becomes a back-door way to taxpayer bailout," said a Congressional aid who works on banking issues and asked not to be identified. "On the other hand, it is a recognition that the banks can't bear the full brunt of the burden by themselves."

To bolster the fund, Mr. Seidman, chairman of the F.D.I.C. suggested in December a $25 billion assessment on the industry on top of an 18 percent increase in contributions paid by banks. But he later backed away from that suggestion after representatives of the industry which posted earnings of $15.4 billion for the first nine months of last year, said it could not afford such an assessment.

His proposal today, parts of which were disclosed earlier this week, calls for borrowing the $25 billion. Parts of the plan could be adopted by the F.D.I.C. without Congressional approval and other aspects would require legislation.

It is too early to determine whether either the Bush Administration or Congress would support the new plan, although the Congressional Budget Office has recommended increasing the borrowing authority of the F.D.I.C., now at $5 billion, by another $5 billion to $10 billion. Treasury officials, who have left the issue largely in the hands of Mr. Seidman and have disagreed with him on some aspects of the Administration's comprehensive banking overhaul proposal, declined to comment on his plan.

As part of the 11-point plan announced today, Mr. Seidman proposed a $15 billion increase in the amount of money that the F.D.I.C. could borrow from the Treasury, to $20 billion. He said that for each $1 billion borrowed over the current $5 billion borrowing limit, the F.D.I.C. would increase the premiums paid by banks by 0.35 cent per $100 in deposits insured to pay for the loan.

On Monday, Mr. Seidman announced the first part of his plan: a $10 billion loan over 15 years to be financed through an 18 percent increase in the annual contributions paid by banks. But the F.D.I.C. board has not recommended whether the source of the loan should be from the Government or the banks.

Mr. Seidman and another board member, T. Timothy Ryan Jr., said that they thought the best source of the loan might be the Federal Reserve.

Today, the board took the first steps in raising the premiums paid by banks to the fund to 23 cents per $100 of deposits insured, from 19.5 cents, effective in July. The F.D.I.C. said the proposed increase would raise $870 million each year and would have "minimal impact" on the industry, costing banks $574 million after taxes.

Bankers said any increase in premiums could be spread among customers and shareholders without great pain, but they complained that all banks, including the strong, were being required to pay for the problems of the weak.

"Everybody is going to try to pass along the cost to their customers with higher fees, lower interest rates on deposits and higher rates on loans," said Raymond V. O'Brien, chairman of the Emmigrant Savings Bank in New York. "But there is so much competition, including non-banks like money market funds who do not pay insurance premiums, that I doubt all the cost can be recovered. We can afford it, but it definitely is going to put a dent in our bottom line."

John W. Spiegel, executive vice president at Sun Trust Banks Inc. in Atlanta, said the need for banks to keep profits high enough to attract capital would require that the higher insurance costs by passed on to customers. "Most of the banks in our system were planning for a 19.5-cent premium this year," he said, "though some had anticipated it could be higher."

At a breakfast today with reporters and in testimony later before a House banking subcommittee, Mr. Seidman sought to reassure his audiences that the plan provided for credit lines on which the F.D.I.C. might not have to draw.

"We hope not to have to go to Treasury to borrow the money," Mr. Seidman emphasized several times. "But we're doing what we think is prudent."

In a clear response to the Administration's plan to reduce the authority of the F.D.I.C., Mr. Seidman today also proposed an increase in the agency's regulatory powers to set capital standards for all insured institutions.

These are the other key elements of the F.D.I.C.'s plan, which would require legislation:

The agency would be granted the authority to change the way it assesses premiums so that it could base the contributions not on deposits, but on a formula of assets minus capital. This would enable the agency to charge premiums for foreign deposits held by American banks and would affect larger money center banks that hold such deposits more than community banks.

The agency would be granted the authority to issue stock either for the bank insurance fund or for another fund that would be used to provide assistance to ailing banks.

A cap would be placed on bank contributions at 30 cents per $100 in deposits insured.

A goal for the fund would be set at a ratio of insurance to deposits of $1.50 per $100. Existing law sets the goal at $1.25. The fund is now at 43 cents per $100 in deposits and the F.D.I.C. estimates that it will decline to 19 cents by the end of the year.

Some officials said that they were reluctant to borrow money from industry sources because it would probably be more expensive and also further tighten the availability of funds that might otherwise be available to bank customers.

On Friday, regulators from the Federal Reserve, Comptroller of the Currency, F.D.I.C. and Office of Thrift Supervision are expected to announce a series of measures and proposed accounting changes intended to ease what some economists have called a credit crunch.

Mr. KERREY. Mr. President, it is one more piece of information for my colleagues about the workload of this organization. It is an article describing Mr. Seidman's proposal to recapitalize the FDIC.

I will read the first paragraph:

L. William Seidman, the nation's senior banking regulator, today proposed a $64.4 billion plan over 5 years that relies heavily on government borrowing to shore up the ailing Federal program that protects depositors.

That is, all by itself, enough for one human being, to be in a situation where you are Chairman of the FDIC, and change the name, and he becomes Chairman of the RTC, which is too much. It accounts for all the confusion and problems that we are finding out with our people themselves. The RTC is not getting the job done. They have had 18 months, and my conclusion is that—and it is inside the GAO report—there are enough examples to cause my colleagues to say that we ought to make this change prior to approving this extraordinarily large sum of money.

I yield the floor to the distinguished Senator from Arkansas for such time as he needs.

Mr. BUMPERS. I thank the Senator for the amendment, and I am honored to be a cosponsor of it.

Mr. President, we should bear in mind that the RTC Board of Directors was designed simply to replace the old Federal Home Loan Bank Board, which originally had oversight and supervisory responsibilities over all of the S&L's in this country. And they fell into such disrepute, we just abolished them and handed this authority to Bill Seidman and his crowd.

This is an amendment that makes common sense. You do not get a chance to vote for many things around here that are commonsensical. But if this board were handling your own personal property, you would vote for this amendment in a New York minute. And they are handling our property, because we are all taxpayers. The taxpayers of this country have a right not just to hope, but to know that their losses are being minimized. Management of assets is a very sophisticated business. Whether to keep or sell real estate is a decision that requires a lot of thought, a lot of data. Whether to keep or sell junk bonds, which were one of the primary nonperforming assets in the S&L's, is a sophisticated business.

Pension funds all across America pay consultants hundreds of millions and billions of dollars a year just to advise them on when to buy and when to sell.

Here you have an oversight board consisting of five people including Secretary Brady, Secretary Kemp, and Federal Reserve Chairman Greenspan.

Now I invite the Members of this body to ask yourselves how much time those three men have to deal with the day-to-day oversight problems of the

Resolution Trust Corporation? Answer: Virtually none.

What the Senator from Nebraska proposes in this amendment is to have a working board, a board that is experienced in the handling of these kinds of assets. And, just as important, a board with members who have time to devote to the board's work.

Incidentally, there was a great story in the Wall Street Journal last week about the fact that junk bonds have gone up in value something like 40 percent, a lot of them have gone up as much as 40 percent in the last 60 days.

RJR Nabisco made an offer the other day for a billion dollars' worth of junk bonds and it was oversubscribed 2 to 1. Now, this is oversubscribed because those junk bonds were selling at 17 percent and I guess there is still enough apprehension among those bond holders that they would rather have something a little more secure.

But when RJR is buying back their junk bonds, those bonds keep going up in value. And you know what they are offering for those bonds? They are offering stock and cash which really has a greater value than the value of that junk bond today.

Think of the number of institutions in this country that may have RJR Nabisco junk bonds in their portfolios. Can you imagine Secretary Brady, Secretary Kemp, and Alan Greenspan sitting around making the decision to accept or not accept the offer from RJR to buy back the bonds? Of course they are not.

Mr. President, I have this nagging suspicion that when the dust settles on this whole RTC thing we are going to find that RTC has sold billions and billions of dollars worth of assets at bargain basement, fire sale prices to get rid of them.

I will tell you something that really disturbs me and that is that we put a provision on the RTC bill to allow the infusion of new capital, new money by the Federal Government, into some thrift organizations that were still operating and had a chance to make it. And to my knowledge that provision, which we put in there with the best of intentions to keep from closing some of the S&L's that had a chance to make it, because closing them down is very expensive, has never or rarely been used.

Estimates of the cost to close one S&L in my State were $150 million. I promise you, Mr. President, you could have loaned that S&L half that amount of money to get their capital structure up to the required 3 percent and it could have stayed open. That would have saved $75 million, or maybe $150 million, because they would have been obligated to ultimately pay the $75 million back. But the RTC has not used that provision.

I am reluctant to be that critical because the problem is of such a magnitude; difficult to deal with; and there are so many deep-seated problems in hundreds of S&L's. But that is just precisely the argument for this amendment.

Mr. President, I voted against the Harkin amendment. I studied that amendment for some time. I decided that the responsible thing to do was to go ahead and vote against it.

Certainly I would like to support the distinguished floor managers on things like this when I can. They work very hard. I have a lot of confidence in them.

I appreciate the chairman of the Banking Committee's offer to study this amendment. It is up to the manager of the bill whether he wants to go ahead and have a vote. I am certainly prepared to do that.

But you know the Harkin amendment simply said we are going to give you $15 billion now and we are going to give you $15 billion later if you come back and tell us you are doing the best you can.

I find the administration never has any trouble sending a communication over here saying "We are doing the best we can." So why go through the formality?

We assume they are doing the best they can. But it is not good enough. So we have a responsibility to the taxpayers of this country. They may never believe it because they are so suspicious and distrustful of this S&L bailout. But whether they believe it or not, we have a duty to be able to face them and say we have done the very best we could do with a disastrous situation.

I, for one, do not want to go out and face them again when this is all over and the literally hundreds of stories begin to come out about under priced assets.

I keep hearing these stories and I keep reading these stories but I do not think you have seen anything yet compared to what you are going to see.

I strongly urge my colleagues to make this very simple commonsensical step to at least do our best and do our duty in making sure there is a working, committee board, not just figureheads dealing with this problem.

I yield the floor, Mr. President.

Mr. KERREY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Nebraska has 25 minutes and 47 seconds remaining.

Mr. KERREY. With the colleagues that I have here on the floor, Mr. President, I ask for the yeas and nays on this amendment.

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

The yeas and nays were ordered.

Mr. KERREY. I thank the Chair.

Before yielding to the distinguished Senator from New York, Mr. President, I make one point off of the comments made by my friend, the distinguished Senator from Arkansas. He talks about the possibility of saving money; in this particular case, $150 million in an institution in Arkansas.

The details of what I heard him express here requires some risk, some political risk, Mr. President, because, as we know, in the 1988 deals there has been what I would call a constriction of the environment under which risk is rewarded at the very least. There is a tendency to cause people to go on the defensive in the environment where one could be punished politically for giving somebody a favor of any kind.

Of course, if you are going to get someone in the private sector to participate in a venture, it has to make economic sense, so you must reward them, and you are in conflict. You have a political objective that is in conflict with the economic objective of trying to move the asset.

This is made worse, Mr. President, by what I would affectionately refer to as the risk versus the regulatory mindset of many of the people in RTC. And it is why at the heart of this proposal I urge my colleagues to consider, if you do not think the RTC is functioning correctly now, consider that what I am offering is a chance to get a strong, full-time chairman, strong full-time chairman, that is able to overcome this problem of wanting to avoid risk.

Because as long as we avoid risk, I will guarantee you the losses the RTC will suffer on behalf of the taxpayers will exceed by a considerable extent the amount of daily losses being represented. And in face of the statements made by Mr. Seidman, I would continue to argue it is doubtful we are losing money on a daily basis. But, under any circumstances, the losses the RTC will suffer trying to avoid making a political mistake will substantially dwarf any of these day-to-day operating losses that we currently have.

How much time does the Senator from New York wish?

Mr. MOYNIHAN. Would the Senator have 10 minutes that I might speak?

Mr. KERREY. Indeed I would. I yield 10 minutes to the distinguished Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise with enthusiasm and a measure of asperity to support the proposal of the Senator from Nebraska. We are having a rare look at a much ignored subject called government; called public administration; as Hamilton put it, called energy in the executive.

In the history of the United States, there has never been anything remotely approaching the scandal of the savings and loan fiasco of the 1980's.

The Comptroller General estimates that it will cost us, in the end, something like a half a trillion dollars. None of it had to happen. It was al-

lowed to happen by people who were scornful of government.

If you have a contempt for government, do not be surprised if you end up with contemptible government and a half a trillion dollars lost.

I wonder if the distinguished author of this amendment would be interested to know a simple fact about my own State and its savings and loan associations. As the Senator from Nebraska knows, 73 percent of the total bailout cost comes from the failure of State-chartered savings and loan associations. The pattern was, the States supervised—or failed to supervise—the activities of these lending organizations and the Federal Government guaranteed the loans. It is as simple as that.

Some States had a sense of their responsibility. May I say, in New York State, which had a banking department established in 1851 the superintendent of banks said: You may put up to 10 percent of your capital in direct real estate ventures. In California and in Texas they said: You may put it all up. You may bet everything with federally guaranteed money. And they did.

The result, sir, was between 1986 and 1989, one State-chartered savings and loan institution in New York State failed. In the whole of the decade, four did. We have a tradition of responsible management of public trust: good government. We had one failure, and over a decade, four.

One of the consequences of this failure will be the largest transfer of wealth from one region to another in history. The State of New York—and this calculation is a year old now—will have a per capita present value net loss of $707 per person; $12.6 billion in total or about $2,500 per family: we will be paying other parts of the country because they failed at their responsibility of regulation.

Mr. RIEGLE. Will the Senator yield at that point?

Mr. MOYNIHAN. I will be happy to do so.

Mr. RIEGLE. The Senator is making an extraordinarily important point, and his great powers of exposition illuminate subjects beyond what they normally get.

But just to add a couple of statistical facts to what my colleague has presented here, if one goes back and looks at the period from 1987 through 1990—this would be up through April 1990, and I would say the data since that time reinforce what I am about to say—the total losses in the savings and loan system that have come from State-chartered thrift institutions is 73 percent.

Mr. MOYNIHAN. Seventy three percent; yes, sir.

Mr. RIEGLE. The vast majority of the loss from State-chartered thrifts, 67 percentage points of that 73 percentage points, come from these two States of Texas and California.

Mr. MOYNIHAN. Yes.

Mr. RIEGLE. So my colleague is exactly right. If we look at it the other way around, if we could roll the clock back and avoid the catastrophic losses of State-chartered institutions in those two States, the whole system is not blown apart in the fashion that we have since seen. But listen to this in terms of the transfer of wealth argument, which is quite true.

As we now come along——

Mr. MOYNIHAN. I have the Michigan figures. I want to give them, but I will hear my colleague first.

Mr. RIEGLE. They are much like the figures from New York. No, we did not cause this problem, although we are asked to pay for it.

We have heard yesterday and today about these repossessed properties in the inventory of the RTC that now have to be sold off at a loss.

We asked the RTC where these properties were which I have information, through the 12th of June 1990, that the RTC indicated, of their total properties, 53 percent of them—and it is a number of properties that totals 19,067—but 53 percent of all of the repossessed properties in the inventory of the RTC are within the State of Texas, a single State.

We asked what percent of the total value, book value of those properties, would be of the total inventory of properties. Just in the State of Texas, it is a total figure of $10.2 billion. It constitutes 69 percent of the dollar value of all the properties as of that date in the inventory of the RTC.

When we start to take this problem down to where it came from, and where it is, although the bill is being paid for nationally, the problem is very specific in terms of where it came from and the effect it had in blowing this system apart.

Mr. MOYNIHAN. Exactly. May I add that of the States which will pay for this, Michigan is the sixth largest payer. It will cost every individual in Michigan $570 now, today. Over years, maybe thousands per person—$5.2 billion will leave Michigan to go elsewhere.

In summary, where we had good State government with good State regulation, there are no more problems than would normally be incident to a complex system. As I say, in the whole decade, four State institutions failed in New York—four. Because we said: Be very careful about how much federally guaranteed money you lend. The overwhelming portion came in two States which said: Do anything you want with Federal moneys. And nobody in Washington objected because, evidently, nobody was responsible.

There is a principal of government that there has to be one person, one board, responsible. Harry Truman put it so well. He had a little sign on his desk that said, "The buck stops here." The way he used it, it meant "I am responsible."

Right now, just as throughout the last decade, the Federal Government guarnatees deposits but the States set the rules. Now with a half a trillion dollar mess, we still have this divided command.

I have such great respect for the chairman. He knows this is just a personal view. I believe the Senator from Nebraska is right. We need a unified command. Make the buck stop somewhere. Show that the era of contempt of government is behind us, and that the mess to be cleaned up will be done with some respect for principles of public administration and good government.

Mr. RIEGLE. If my colleague will yield to me, I would like to engage him on this point for just another minute, because what he has said here is profoundly important.

This part of the story has not been told or not been understood. In part, that is due to the fact that it is such an extraordinary decade-long story that all of its detail gets very hard to sort it out. The Senator has touched upon it with respect to the State power situation.

I must say I think on the part of the Federal Government, when the Federal deposit guarantees were out there and undergirding this expansion of activity by various States within State-chartered thrift institutions, that was a serious error.

We should have severed that relationship. We should have altered it in some way, and I am going to cite a little from the record in a minute on this point—I am having it sent over to the floor—because it needs to be understood also in the context of the banking reforms that are coming down the track and the degree to which Federal deposit insurance for banks now, as opposed to S&L's, should be left out, underneath State-chartered bank activities, and the degree to which we might have an equivalent risk problem out there in one State or another.

Remember, it only took 2 States of the 50 to torpedo the savings and loan system, as this data we just described tells us. So we want to be absolutely certain in terms of changes that take place with respect to commercial banks that we are not setting ourselves up inadvertently for a fall there because of State-chartered activities that are unsound or unwise with respect to Federal deposit guarantees.

So, maintaining a dual banking system and at the same time effecting a wall, a protection, on the Federal deposit insurance is a key question. I must say coming down through the eighties, because this historical record we are developing now is important, if only five people pay attention to it, it

is nevertheless important to be here and to be understood. It was never fully understood generally by the regulators, by the Federal Government, the State regulators, or the savings and loan industry itself. The dimension of the exposure was created by these State institutions and these extensions of powers in only two States.

I recall, for example, that as the national savings and loan organization would come in and testify and otherwise make their comments down through the eighties, I think I can fairly say that they themselves, the people in the industry who were about to get broadsided by these problems, did not themselves fully understand the dimension of risk inherent in State-chartered thrift powers that were building up. And, I must say, savings and loan executives in Michigan or in New York or in other States, who are now themselves very badly damaged by the excesses in a handful of States, were not coming in to us back during the 1980's and saying, "Oh, by the way, we want to draw your attention to a problem we see in our industry in States where there has been an extension of powers out there that we think may create a systematic risk that you ought to be aware of and you ought to do something about."

It should have been seen at the Federal level, but it was not. But I must say, quite frankly, I think the industry itself, which ought to have understood, because they are in the business, did not see it either.

Even after the fact, I think there are many people in the industry who are wondering why the entire industry, in a sense, was thrust into a crisis, into catastrophe, and still even now are not seeing where that essentially came from.

(Mr. WIRTH assumed the chair.)

Mr. MOYNIHAN. I wonder if the chairman will allow me to comment in agreement and describe a situation parallel to his own experience. In the late seventies and the early eighties, this Senator from New York had many meetings with representatives of savings banks. Savings banks began in the Northeast. New York is one of the centers. They were originally charitable institutions. Their names tell you: The Immigrant, the Bowery, the Seamen's Bank, the Immigrant Bank. Metropolitan Life Insurance grew out of a German group. You can tell the extent of the wage system in America by the extent of these banks. The typical bank headquarters was a Presbyterian mass where on Saturday night you could give some of your money, a dollar or two, and they would keep and invest it for you. They only gave money for mortgages. Interest rates went up, mortgages went flat, and they were in trouble. We had to deal with that, and we did. We got through it. The interest rate fluctuation was broken by the early eighties, and these New York institutions got through it. Not all. We had to merge some.

But then I would see the savings and loan people from New York regularly, once a year. This was never a subject of difficulty. As I say, in a decade, four institutions failed, some were merged. They had this interest rate problem, but it was manageable. Deposit insurance paid for it all. Everything worked out fine.

Meanwhile, chaos was taking place in Texas and California. I think that is a fair point the chairman makes. I would like to associate myself with it. I would also like to associate myself with the idea that we had a divided command responsible for the mess and that a unified command is needed to clean it up. Those are my views. I thank the Senator for the courtesy, and I thank the Senator from Nebraska for his thoughtful attention.

Mr. RIEGLE. Mr. President, if I can continue for a minute to finish this discussion. We have two other proposals in this area that I think warrant consideration alongside the proposal that has been advanced by the Senator from Nebraska. Senator WIRTH, for example, has an alternative way of collecting this responsibility in a single place. Senator WIRTH would abolish the oversight board altogether and would give the power it now amasses to the Board of Directors of the RTC and would add two independent members to the RTC Board. That is a different way of skinning this cat. You also have Tony Frank, who runs the Postal Service in our country, and a very distinguished executive who comes out of the financial services industry. His view—he has testified before our committee—is that he prefers as an alternative, a financial czar with the authority of both boards. He has made a very fine presentation in our committee. It is another way of getting at this same problem. I say that because this issue has raised a concern in a number of minds, in our mind as well, in terms of what constitutes an appropriate structure.

Mr. MOYNIHAN. Yes.

Mr. RIEGLE. We gave the administration, who came forward with the first plan, the administrative structure and the engineering design that they asked for. They said to us, look, this is the way we think we can get this job done fastest, fairest, quickest, and at least cost.

Mr. KERREY. Will the Senator yield?

Mr. RIEGLE. I certainly will because I want to engage in this discussion, but the record will show we are very skeptical of that because, even on its face, it looks so complicated that one wondered if we were going to have a situation where A was running into B, B was in conflict with C, and C did not know what D was doing, and so forth. In any event, after going through all that, we gave them the structure that they asked for, and that is what has been in place up until the present time.

I think it is fair and it is proper now, after a period of time, to go through an analysis and to evaluate whether or not that structure has really done what it ought to have been expected to do in that period of time or, as a follow-on question, does our experience now tell us that a revised structure would give us a better result from here on out?

That is precisely what we intend to look at on April 11. We have a day of hearings scheduled. If it takes longer than that, we will take longer than that to take this proposal, to take the Wirth proposal, to take the Tony Frank proposal and any other that comes through the door and look at these and evaluate them and consider them, solicit comment from parties, the important parties at interest that can contribute some insight to this and then make a judgment.

I can tell you this, Mr. President—I think I can speak for the ranking minority members as well as myself—if there is a consensus of view within the Banking Committee that we now feel it is time to change this structure, we will do everything under the living Sun to get it done. I tell you that now and I cannot speak for anybody else, but I am confident that if it is clear there is a better path to take, we are going to be back out here on the floor to try to take it. I will not necessarily wait to do that, speaking for myself, until the end of the fiscal year when the next funding request comes around because if it is clear we ought to try to move in this area, I am not going to want to wait.

Mr. MOYNIHAN. Will the Senator allow me one comment.

Mr. RIEGLE. Of course.

Mr. MOYNIHAN. He knows the respect with which he is held on this floor, and I attest to the value of his commitment. I would like to think that the Senator from Nebraska has raised the matter to a level where it is more visible, but April 11 is good. I thank the Senator.

Mr. RIEGLE. It is right around the corner.

Mr. KERREY. Will the Senator from Michigan yield?

Mr. RIEGLE. Of course.

Mr. KERREY. I have two questions.

Mr. RIEGLE. Will the Senator indulge me on one thing. I sent for something from my office. It just arrived. It relates directly to this conversation.

Mr. KERREY. I will be glad to indulge the Senator.

Mr. RIEGLE. I appreciate that and I will reciprocate in generous measure.

I say to the Senator from New York, often there are things we wish we had said or wish we had seen or wish we had tried to do in the past that we did.

Mr. MOYNIHAN. Things done and undone.

Mr. RIEGLE. I want to cite a little bit for the record an occasion on which I saw a problem and spoke about it and attempted to do something about it in this very area that was at an early date in time. This comes from a committee hearing that we had in the Banking Committee 6 years ago, 6 years ago in 1985.

We had at that time the chairman of the Federal Home Loan Bank Board, Ed Gray, before us. I raised this issue because I was beginning to see too many things that caused me to be concerned about the State powers issued and whether we could have a looming problem out there that we were not properly able to measure because those activities were done at State level and essentially under the purview of State regulators, and therefore something that we would not as a matter of course within the Federal regulatory system have a very good ability to collect and measure. We should have had it within the regulatory system, but I think history shows we did not. But I put this question to Chairman Gray:

What would you think of the idea of limiting the deposit insurance to that ratio of the assets of the institution that are under the form of federally approved activities so that if an institution out in a State was 70-30 in terms of 70 percent of the activities being ones that the Federal Government would authorize and the other 30 being additional powers granted by the State, the deposit insurance coverage in that case would be 70 percent? In other words, there would be a sliding scale which presumably would be publicized. This is a different way at getting at your risk premium so at least the public, the depositor could make an informed judgment. If they wanted to get into a situation where you were in the broader range of State functions and perhaps the risks and the interest rate premiums being offered were higher and the Federal insurance was lower, then at least you would be protecting the Federal taxpayer more directly and not exposing the Federal taxpayer to a higher degree of risk in those State-offered functions.

Mr. GRAY. Let me understand what you're saying. You're saying that the insurance accounts would be less?

Senator RIEGLE. You would do it on a ratio basis. You would say that if the assets of the institution are employed 70-30 and 70 are in Federal-type functions, that the Federal insurance in the case of a failure would be 70 percent. In other words, you would only insure the federally granted powers. If an institution wants to move away from that, they do so and one of the things they surrender is the element of Federal protection for that aspect of State-granted activities.

The CHAIRMAN. If I could interject, what you're talking about then is $700,000 in the example you used would be the maximum insurance they had rather than the $100,000?

Senator RIEGLE. That assumed that that bank was emloying 70-30 in terms of its asset base. What I'm wondering about is how do we inform the depsitor? I want to keep the Government out as much as possible, but I want the information and the risk of the Government put in a form where the public really knows what's happening and a person has a way to make an informed deposit judgment; I'm worried about the safety and soundness issue, as you are.

Mr. GRAY. Well, in all honesty, I have not encountered this particular concept and I would like to think about that somewhat more and not make a precipitous judgment.

Senator RIEGLE. You see, there's a real question in my mind that we are seeing a breakout of more functions or higher risk functions and they are really outside the scope that the Federal deposit insurance was really designed to deal with.

Mr. GRAY. Right.

Senator RIEGLE. And it seems to me perhaps one way to establish a fair and square discipline is to say that Federal deposit insurance covers those functions that the Federal Government intends for an institution to be involved in and anything beyond that, if the State wants to grant additional powers, would be insured by the State. It seems to me we ought not to allow sort of a willy-nilly expansion of the Federal deposit guarantees.

Mr. GRAY. Well, I would like to think about that a little bit more. It is, in some sense, the same kind of thing that we are trying to get at in the risk premium, but it goes at it in a different way.

Senator RIEGLE. If I may just pursue it one step further, it seems to me that if you're running a savings and loan in a more adventuresome environment and you're bridging out in Arabian horses or some of the other things that you cite, the public should understand through the deposit ratio that they were getting into a situation with greater risk. But I have a hunch that the public has been sensitized now by Ohio and Maryland to such an extent that people really want to believe and feel that Federal deposit insurance is really solid as a rock and I want it to be, although I'm uneasy about the fact that the deposit reserves are dwindling and we are in a situation where interest rates have come down and so they're easing some of the stress in the industry but that could be a temporary phenomenon. I think we've got to find a way to let the public understand better the risks associated with different institutions and we can't have the Federal Government sitting here prepared to bail everybody out. I'm talking about managements that to beyond prudent balance and way beyond the scope of what the Federal law actually envisioned.

Mr. GRAY. Let me just say that I would like to—and I assure you that I will carefully consider this concept which is new to me which seems to move in the same kind of direction. Of course, as you know, we have proposed the risk premium that we believe would enable us to basically protect the fund in the same way by providing a premium commensurate with the risk of the activity involved.

Senator RIEGLE. But does that inform the public directly?

Mr. GRAY. No.

I am citing this transcript because there was, on the part of some of us, a sense that there could well be a problem out there by allowing Federal deposit insurance to be stretched out under these State grants of broader powers and authority. From the data that the Senator cited earlier, which is the aftermath of this—now we are 6 years later down the track—we are finding that that is precisely what happened. By allowing Federal deposit insurance to be there for these State-granted powers, that two States in effect have been able to sink the entire system. New York, Michigan, and the other 46 States, for the most part, are now paying an enormous premium to cover the failures of State-chartered institutions in two States because of that connection to Federal deposit insurance.

Mr. MOYNIHAN. Will the distinguished chairman allow me one comment.

Mr. RIEGLE. By all means.

Mr. MOYNIHAN. Might I say his exchange with Mr. Gray was prescient. The Senator sensed what was coming. It had not happened. It did. And now we are on the floor.

One other comment as well. We are talking about Government here. The one big issue of 19th-century politics that we never resolved in the 19th century was the nature of the banking system. We started out with it. Hamilton created a Bank of the United States in 1791 and it was allowed to expire in 1811. Just in time so that the Federal Government would have great difficulty in financing the War of 1812. That having been found out, we recreated it. Jackson let it expire in time to create the panic of 1837. It went on and off. We were on to gold, wampum, corn husks, greenbacks. We finally got a Federal Reserve Board in 1913. But we still have a dual system.

It is a problem the 19th century never solved, and at the end of the 20th we are still at it. I am very happy that the Senator is chairman of the Banking Committee because when you get through cleaning up this mess, I think you have this large issue still to address. I am happy that the Senator will be there to do it.

Mr. RIEGLE. I thank Senator MOYNIHAN for his gracious comment.

I will say one other thing. When we passed the FIRREA legislation in 1989, we put a stop to this in the savings and loan industry. So we ended and scissored-off those State activities that created this risk profile. I can tell you this. When we finish with the banking bill to the extent my view prevails—and I am going to do everything I can see to see it does—we will not have that problem going on into the future in the banking system. We are examining that right now.

But this issue of lining Federal deposit insurance up and what it covers, I tell you I feel very strongly about this. That ought to cover federally chartered activities. If somebody wants to go beyond that then they can devise a system to provide the protections, the safeguards, and the insurance. It is not going to happen again with respect to Federal deposit insurance if I have anything to do with it.

Mr. MOYNIHAN. Not on the Sentor's watch.

Mr. RIEGLE. Not on my watch. I thank the Senator.

Mr. KERREY. Just for the sake of my comments, I ask the distinguished

Senator from Michigan to yield for a question. Let us assume for the moment for the sake of the argument, I am trying to understand this proposal to hear the issue of restructuring because I hear in some of the statements of the distinguished chairman and some of the statements of the distinguished ranking member that they acknowledge some restructuring should occur. The Senator's question seems to be in what way should we restructure. I am wondering, assuming a best-case scenario that the Senate Banking Committee reports out a proposal, when could such restructuring be put into place?

Mr. RIEGLE. Let me say, if the Senator will yield, that there has been some internal restructuring already done. The RTC has had within its formal day-to-day operation effected certain consolidation, certain streamlining, which they feel and assert has made them far more efficient. That judgment could be in the eye of the beholder. The issue that it seems to me the Senator is raising is the issue of executive level responsibility of policy authority, and the overall direction of supervision.

Mr. KERREY. The question I am trying to get answered is let us assume the Banking Committee reaches a consensus on a structure change. When would a structural change be in place under the so-called normal procedures of proceeding through the committee hearing process?

Mr. RIEGLE. I do not know anyone who can provide a precise answer. But I think the answer is in a sense the same or nearly the same as the question of how long would it take, or is it likely, or feasible, or possible to get the changes that the Senator is seeking today, and that particular organizational design in place. For example, hypothetically, let me take both tracks. I think it is important to take a look at what is involved in getting the stuctural change done.

Mr. KERREY. All I am trying to establish, and I understand—I do not want to drag the argument out too long—it will take some time if this restructuring proposal that I am putting on—the simple restructuring proposal—is adopted as far as refinancing. Say we have reached the conclusion, this body and the House, and we come together. And say we have the changes. The decisions are not being made. Yes. That maybe is not in place for 60 days. But if we hear that it will be another 6 months, there will be a period of time minimally that will elapse as I see it of 6 months, and perhaps even longer. Is that a fair statement?

Mr. RIEGLE. Let me respond. With all due respect to the Senator from Nebraska and his view on this, there were some big if's that he put in the hypothetical: If the House accepts this, if it survives conference, if it comes in a bill that the administration will accept, we can say that. That needs to be added as well.

My intention coming off our April 11 hearing, which I very much hope and expect the Senator from Nebraska will be present to talk about these issues, is that I would envision sometime probably around June of this year—I cannot give you precise dates, but that is the general timing I am looking at with everything else we have to deal with—to have whatever recommendation the Banking Committee as a whole feels is appropriate to come forward with and bring through the process.

I might say to the Senator, not just to his amendment but to any other, that at this time putting any organizational redesign consent on to the bill, yours, somebody else's whether it is here, in the House, taking that on through to an enactment at this time I think is very unlikely. It is very unlikely because of this emergency funding bill. It is already 90 days late. We are incurring premium costs and not getting it done.

There is not a consensus available today as to any organizational structural change. The Senator has a version and it is well thought out. He has cosponsors of that. Senator WIRTH has a different concept in mind. There are other Senators who also have restructuring ideas in mind.

So I say to the Senator that I think to actually get a restructuring proposal enacted into law, signed into law, and in place I think the route I am proposing is actually faster because I think it has a greater chance of being accomplished in the end—whether that is 4 months from now, 6 months, 8 months from now. Then there would be the notion that we are going to be able to do it here in a sense on an ad hoc basis as an amendment to this and take it all the way through the process.

So I think the route I am suggesting, though I cannot give a precise date, is the fastest route available.

Mr. KERREY. Included in the Senator's substance basically if the amendment is adopted it will be stripped down and will not be enacted, it will not be put in place. Either the President will threaten to veto it, or the President will not make the appointments, or something will happen along the way and it will not come to pass. Is that correct?

Mr. RIEGLE. I am saying those are hurdles we have to jump. I do not know of any body of support for that particular proposal in the House right now. Obviously, it has to be adopted by the Senate. If it is adopted by the Senate today, it obviously has cleared the first hurdle. But there are others that are beyond our direct control that nevertheless are there as the Senator well knows.

What I am trying to convey as well is my interest in wanting to examine, think through, and decide upon structural changes that may give us a better result. That is the Senators goal. That is also my goal. The question is, is there a way to collect it into a work effort that actually yields the change?

I think it is important to note if the administration comes back with the view that they think everything is fine, they do not want any changes, that becomes a hurdle that has to be jumped. It is a very very tough hurdle to jump as the Senator from Nebraska well knows.

The PRESIDING OFFICER. The Chair notes that the time of the managers has expired, and the Senator from Nebraska has remaining 13½ minutes.

Mr. KERREY. I thank the Chair.

Mr. President, in an earlier discussion, the distinguished Senator from Michigan and I were trying to figure out how much time will be left. We indicated we were going to try to restrict this to an hour-and-a-half, but we might go over. I alert my colleagues that there probably will be some overage in this instance.

I find myslef wanting to make sure that my colleagues understand what we are about to do. We are going to have a rollcall vote on this refunding. I alert my colleagues, if there is any thought that this will be a voice vote, it will not. I will object to any unanimous-consent request that comes in to put a voice vote on this. I will insist upon a rollcall vote now and on final passage.

We are spending $30 billion of taxpayer money—$30 billion. I tried to get this proposal on when the original FIRREA legislation was considered, and I have had a bill introduced to do this, not talking about the need to restructure; they are not making that decision. They can say we have gotten more efficient, and we have streamlined the organization, but the history of this operation is replete with examples where they are not making decisions, or one organization will make a decision, and the other will overrule it.

Mr. President, I see that my colleague, the distinguished senior Senator from Nebraska, is here. I know that, as a cosponsor, he wishes to speak. I will be glad to yield at this time to give him an opportunity to do so.

Mr. EXON. Mr. President, I thank my friend and colleague from Nebraska.

Mr. President, I rise to emphasize, if I might, for a few moments, what the Senator from Nebraska has just said. It was several months ago, and I do not know how long, I do not remember; but the record will clearly show that the amendment being offered at this juncture was exactly the same amendment offered months ago by the Senator

from Nebraska, then also with my cosponsorship.

I just cannot quite accept this proposition that this is not a time to restructure the difficulties of this institution that are legendary. If you have something in serious, serious trouble, then you look to the top and you make some changes in the top of that structure to get the job done that has to be done, obviously.

It seems to me, Mr. President, that we can go on forever with excuses that we may take a look at this proposition, but this is simply not the time to do it. This is a very important time to do it. I cannot imagine that the acceptance of the amendment offered by my colleague from Nebraska would do anything but expedite and save money on the tremendous task that faces all of this.

Having said that, that is not any basic criticism of any of the officials that are presently serving on the board; I think they have all tried to do their best. But even they concede that their best has not been good enough. Therefore, it is my view that the amendment that is before us is simply one to restructure, to streamline, to fix responsibility, to get some new blood in a floundering situation. Therefore, I hope that the Members of the Senate will recognize that. I hope that the managers of the bill—although I know that they are both very talented individuals and do not happen to see this, as do the two Senators from Nebraska—but it seems to me that this is such a reasonable amendment, designed to do the things that everyone wants done, and that is to do a better job than has been done by this organization in the past, and get on to streamlining it, to get things done in the future and, therefore, eventually, have less cost to the taxpayers.

I yield the remainder of my time back to my colleague.

Mr. KERREY. I thank the distinguished senior Senator from Nebraska for his leadership on this issue. He has helped me a great deal to consider what kind of policy board ought to be in place. He has had the experience as a Governor and knows you have to give the taxpayers the opportunity to make their case.

I ask unanimous consent that a long statement that I have made outlining what I consider to be some areas where the RTC has not made decisions and, as a consequence, there has been a cost associated with their inability to do so.

For the sake of my colleagues who are saying maybe we should wait and allow this to be heard, I know most of my colleagues have had anecdotal tales told to them. You are going to vote $30 billion here, and the question you ought to ask is, is the RTC doing the job? Do you have a policy board in place that is giving them the guidance that they need?

Let me go through a couple of examples, Mr. President, to add further an additional weight to this particular argument.

First of all, Mr. President, I call the attention of my colleagues to some rather telling quotes of people that ought to know. David Cooke, executive director of the RTC, said in an article from the National Journal of October 7, 1989, "In the best of all worlds, I would be solely accountable to one person. But the way this thing was set up, we have two boards."

William Seidman was quoted in the August 28, 1989 New York Times, referring to the oversight board, "As far as I know, there has never been an animal like this setup in Government. We are really sort of the body, and they, the RTC Oversight Board, the mind."

Mr. President, allow me now to go through a few examples of what happens when you have an RTC Board with management control and an oversight board that meets once every 2 months to set policy, not clear exactly when or where they are going to intervene in the decisions being made by the RTC Board itself; and these illustrate additional costs, Mr. President, of this proposal. This series of things, in my judgment, indicate the compelling need to make a change now, for us to assert that if we are going to appropriate the money, that we ought to have some say as to how that money is going to be spent.

The RTC is obligated under FIRREA to identify properties with scientific and cultural value. That was debated when the FIRREA legislation was considered, and it was one of the amendments that was proposed as being needed now. The House Banking Committee talked about it at great length, that something was wrong here. It illustrates why the amendments that we are seeing now are recurring. RTC is not getting it done. The RTC tried to carry out this requirement. They entered into a memorandum of understanding with the Fish and Wildlife Service. They approved that memorandum of understanding, and at the time, Peter Monroe testified that the oversight board was not participating in the memorandum of understanding process as it was viewed as, "a means of defining operating procedures."

But after lengthy procedures, and after the RTC had made the decision to do this in December of 1990, after months of effort, the understanding was signed by the RTC and Interior, but only then, in a very stunning reversal, the oversight board made the decision in a meeting that was not open to the public, in which no minutes were taken, and the RTC Oversight Board disapproved of the memorandum of understanding. They intervened in this case and said, "We have authority here. We do not like what has gone on," after indicating that they would not.

However, in a different situation, Mr. Seidman offered a plan under what is called a seller financing plan, a very controversial thing, last fall, very controversial, in the spring and summer of last year, this question of whether or not we ought to require the taxpayers to provide financing to individuals requiring assets. The RTC made a difficult decision, and the oversight board was asked by a number of people to intervene on the oversight board, and they maintained that such a decision was an operational decision, and that they should not, therefore, take any action.

Mr. President, the RTC has been unable to do a number of things. Almost everybody who looked at this says it would save the taxpayers money, but they do not do it.

As I indicated earlier, one of the principal problems is that they are attempting to avoid risk, for understandable reasons. I understand that the committee is anxious to have the Senate vote $30 billion of the taxpayer money, but my central argument is that the RTC is wasting taxpayer money, because they are unable to make decisions. And central to that argument is that we need a strong public appointee, appointed by the President, a full-time chairman, that will enable us to sort out these different and varied policy choices, particularly those that are going to be difficult for us to explain to taxpayers, where there may be economic gain, and assist the RTC in making decisions. The RTC has been unable to securitize a single mortgage.

They got this huge portfolio of mortgages and junk bonds and have been unable to securitize it. And the reason, Mr. President, is they are afraid of being sued. They are afraid of a law suit.

I do not know how many of you paid attention—I suspect many of us watched with great interest as the date approached last fall for this grand auction to sell assets. There were stories at the time, and we were having to explain at home why we were advertising worldwide to sell off assets here in the United States. As the date approached, everyone was interested to see how the auction would go. And the RTC, at the last minute—we were concerned about something to do with the auction—they cancelled the auction. As a consequence, they found themselves being threatened by a lawsuit with the auctioneer.

Mr. President, it is important for my colleagues to understand that what they were trying to do was sell assets to get cash so we could reduce the cost to the taxpayer. It is one of the most important examples, I believe, to illustrate to those who are saying if we do not vote this money we are going to cost the taxpayer money. I am saying

if you do not make a change you are going to cost the taxpayer money because the RTC is going to make either no decisions or they are going to make bad decisions every single day we continue to allow them to operate as they are doing.

Mr. President, this is a rather simple amendment, in my judgment. As I indicated earlier, I offered it to the original FIRREA legislation. I attempted to offer it on a number of other occasions. I have introduced it as a separate piece of legislation.

The distinguished chairman of the Banking Committee was good enough to allow me to appear on one other occasion and listen to some discussion having to do with this. I was there when Postmaster General Frank did indeed comment not just favorably on the notion to restructuring, but the need to get a strong person in charge so the decisions could be made by the Resolution Trust Corporation in a manner that would preserve our taxpayer's money.

This amendment simply replaces the dual board structure with a single board. The amendment streamlines the RTC structure and clearly places the single board and the chairman directly in charge of the RTC operation.

It does not undercut the authority of the President. It gives the President clear authority and gives Congress all the oversight that we need. It is a simple change in the oversight structure that allows us to have an entity out there that will be explaining in a persuasive fashion exactly what it is they are doing and what they need to do so we can get this matter behind us.

The Banking Committee is going to be taking up many other things, Mr. President. I do not want to question the workload of the chairman of the Banking Committee because I know that committee is going to be facing all kinds of problems. And indeed one of my arguments is that the time required to take up major bank reform and the time required to take up the question of how we are going to recapitalize the FDIC makes it essential for us to deal with this problem now.

The PRESIDING OFFICER. The Chair would announce that the time available to the managers and the distinguished Senator from Nebraska under the previous order has expired.

Mr. RIEGLE. Mr. President, if I may, I am going to offer an unanimous consent.

Mr. KERREY. Mr. President, I ask unanimous consent that I be given 3 or 4 more additional minutes. That is all it will take to finish the point.

Mr. RIEGLE. By all means.

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

The Senator from Nebraska is recognized for 4 additional minutes.

Mr. KERREY. I understand other proposals are here. I understand the offer has been made to hold hearings on this. Mr. President, this oversight board meets six or seven times a year for 150 billion dollars' worth of assets. I cannot imagine under any other circumstances you would allow an oversight board to meet that infrequently.

As I indicated earlier, many of the critical decisions are being made in closed meetings with no minutes being taken. They are not making the right decisions, Mr. President. We know they are tough. Many of them are going to be politically difficult because if somebody is going to take one of these deals it has to make economic sense.

I urge my colleagues to dig up—since we are going to have an hour or two—dig up some of the want ads that the RTC is running in the Wall Street Journal, trying to find managers to come in and manage under the conservatorship program savings and loans they have seized and that they are operating.

They are out trying to get people just to come in and run these things for as long as it is going to take to sell them off. They are in a holding pattern, Mr. President. They are claiming to have resolved over 350 institutions. But they are not selling assets; cash is not coming in. And, as a consequence, we are being asked to collect additional cash from the taxpayers; 30 billion dollars' worth.

Mr. President, I say, with all due respect, for this process that we have exerted considerably more oversight over, the appropriations under Operation Desert Storm than we are doing in this particular circumstance.

Secretary Cheney, after staying up all night, came to the Appropriations Committee and presented the details of how those expenditures were being made. But we see no similar willingness on the part of the administration to come to Congress and say here is the details of how we are going to make this appropriation.

We are being asked to simply vote $30 or $48 billion with the borrowing authority and say you were doing the best job you can. Mr. President, they are not doing a good enough job. It may be the best they can, but unless we organize it, it will not be as good as they ought to be doing. And unless we organize it now, my argument is the taxpayers will have more expenditures, not less.

It is going to cost us more because, in the face of the evidence that the RTC is not doing a good job we are going to say, well, we need to study it in a little more detail.

I believe the time is now to make this change and to give the public more information and to give indeed I think the public the opportunity not only to see the difficulty of this but to rally in support of resolving it and getting this terrible issue behind us so we can get on to meaningful reform, get on to recapitalizing the FDIC, so we can get on to the business of doing all the other sorts of things that need to be done if we are going to have a healthy banking system in the United States.

I thank the distinguished chairman of the committee, the distinguished Senator from Michigan, and the ranking member, the distinguished Senator from Utah, for allowing me this additional time.

I yield the floor.

Mr. WIRTH. Mr. President, I agree that we need to make significant reforms in the RTC's operations and other elements of the S&L rescue. During the last Congress, I introduced the Savings and Loan Simplification Act of 1990 to propose such reforms. I will introduce similar legislation today.

Senator KERREY has identified one aspect of the RTC which deserves our attention—the cumbersome two-board structure. I have also called for a revision of that structure although my proposal differs from the proposal sponsored by the Senator from Nebraska.

However, there are a number of other issues besides the dual board structure that deserve our attention. For example, I believe we must also examine the thrift regulatory structure and the oversight of the Federal Home Loan Bank System. Many other Senators have indicated an interest in the RTC's asset disposition process. I understand that Senator METZENBAUM as well as others may have other proposals related to the RTC and the S&L rescue. The point is that restructuring the RCT Board and the Oversight Board is not a magic bullet to reform the S&L bailout: there are a number of other proposals that deserve attention.

The Banking Committee plans to hold a hearing in April to examine proposals regarding the RTC and the S&L rescue plan in general. These hearings would allow us to examine a variety of suggestions and produce a package of reforms that make sense together rather engaging in piecemeal reforms here on the floor. If we pass Senator KERREY's plan today, we will likely be discussing further reforms this summer and perhaps again every time the administration requests additional funds. We should keep the RTC on a short leash. But we should carefully examine reform proposals and give the RTC guidance rather than jerk the chain and disrupt the RTC's operations every six months.

Senator KERREY proposes to consolidate the two boards by eliminating the RTC Board and adding independent members to the Oversight Board, retaining those members too busy to carefully monitor the RTC. My proposal for restructuring the boards would eliminate the Oversight Board and add independent members to the RTC Board. Both plans would consolidate the policy and operational guidance roles of the boards, eliminating

inefficiencies and conflicts between them. Both plans would bring independent representation and leadership to the combined board, providing the accountability for the RTC that we seek and need.

But I believe my plan has the important advantage of retaining the members of the current board most involved in and familiar with the RTC's operations while eliminating those most removed from the RTC and preoccupied by other responsibilities. I believe we should allow the Banking Committee to examine the two proposals, obtain input from outside experts and determine which reforms make the most sense. Moreover, as I mentioned above, I believe we need to make other changes in the administration's S&L program and we ought to make those changes in concert with restructuring the RTC Board. I would look forward to working with Senator KERREY in that process.

In conclusion, I agree with the Senator that we need to act. But I believe it is premature to act now. Let us do the job right or we may find ourselves reforming our reforms, a result which would only prevent the RTC from doing its job efficiently, costing taxpayers billions more than necessary.

Mr. LAUTENBERG. Mr. President, I am going to vote for the amendment offered by the distinguished Senator from Nebraska [Mr. KERREY].

Mr. President, the Resolution Trust Corporation is not operating as well as the people of this Nation have a right to expect. From the start of the cleanup operation, the RTC has been plagued by mismanagement and infighting. These problems have slowed the progress of the cleanup, and have cost taxpayers substantial sums of money.

Mr. President, the RTC is a two-headed operation. One head is the Oversight Board, which sets general policy and oversees operations. The other head is the Board of Directors, which is responsible for operations.

Mr. President, when the RTC was originally established, the Oversight Board was seen as the mechanism by which the administration could maintain control of the S&L cleanup, and be held accountable for that cleanup. It made sense at the time. But, practice, Mr. President, it is not working.

One reason it is not working, Mr. President, is that the members of the Oversight Board simply lack the time to devote to RTC oversight. There are three ex officio members of the Board who all face enormous responsibilities. One is the Secretary of the Treasury, who is now leading a campaign for an historic, comprehensive reform of our Nation's financial system. Another is the Secretary of Housing and Urban Development, who is responsible for addressing our Nation's housing crisis, and who now must develop regulations and implement the first major housing bill to be enacted in many years. And third is the Chairman of the Federal Reserve Board, who must manage monetary policy through the difficult uncertainties of a recession, and who now also is leading a study into the revenue impact of a capital gains tax cut.

Mr. President, no matter how competent the holders of these offices may be, they are only human, and they only have 24 hours in a day. Experience has shown that they cannot perform their official responsibilities in their primary capacities, including frequent appearances before congressional committees, and at the same time give adequate attention to correcting the serious problems that currently exist at the RTC.

Compounding matters, Mr. President, the current dual board structure of the RTC has led to needless conflict and infighting between the two boards. This has also only slowed the progress of the cleanup, and cost taxpayer dollars.

In sum, Mr. President, given the severity of the problems that have pervaded the RTC, I am convinced that we need to improve the agency's structure. And we need to do it now. The S&L cleanup should be led by people who have the time to do the job right. Otherwise, the problems at the RTC are likely to persist, and the ultimate losers will be America's taxpayers.

Mr. KERRY. Mr. President, I support the amendment offered by the Senator from Nebraska to restructure the Resolution Trust Organization. Senator KERREY's bill eliminates the Resolution Trust Corporation Oversight Board and Board of Directors and replaces them with a single RTC Board of Governors.

The purpose of this amendment, as of so many of the amendments that have been offered, is to create greater accountability for the savings and loan bailout.

The RTC has two purposes: It must close down and sell insolvent thrifts and it must dipose of the assets held in those thrifts. While the objectives of the RTC are clear, the process has been hampered by structural problems that prevent the RTC from exercising its responsibility quickly and efficiently.

As it stands now, the RTC staff is unable to act until the RTC Board and the Oversight Board signoff. That obviously takes time and costs money. It seems to me that we need an organization in place that streamlines the decisionmaking process.

I also believe that the Kerrey amendment will augment accountability by expanding the Board of the RTC to include more members from the private sector. I have long shared Senator KERREY's belief that the RTC should be an agency independent from the administration. That view was reinforced this past fall when the Secretary of the Treasury, a member of the RTC Oversight Board, delayed appearing before the Banking Committee to request additional funds. The result is that we are here today debating an authorization that should have been settled 4 months ago.

The amendment before us will streamline the process and ultimately will save the taxpayers money.

Mr. RIEGLE. Mr. President, I am going to enter a unanimous-consent agreement, and in so doing it I want to recognize the fact that the Senator from Louisiana [Mr. BREAUX] is on the floor and ready to go, and I will address that in the context of this unanimous-consent request, and at the end I will also indicate that Senator SPECTER has a sense-of-the-Senate resolution on war crimes that he wishes to offer and that, as we envision this consent agreement, that will come after an amendment that Senator GRAHAM of Florida intends to offer.

I will handle that in just a moment.

UNANIMOUS-CONSENT AGREEMENT

Mr. RIEGLE. Mr. President, just to alert everyone to what is coming down the tracks, I ask unanimous consent that the vote on or in relation to the Kerrey amendment No. 25 occur at 2:50 p.m.; that there be 20 minutes of additional debate on the amendment, equally divided and controlled in the usual form, beginning at 2:30 p.m.; that following the expiration or yielding back of this 90 minutes of controlled debate on the Kerrey amendment, which in effect has now run, Senator BREAUX be recognized to offer an amendment regarding a study of the potential use of tax credits in the disposition of RTC assets, on which there be 1 hour equally divided and controlled in the usual form with no amendments to the amendment in order; and if a rollcall vote is requested with respect to the Breaux amendment that vote will be scheduled to occur immediately following the disposition of the Kerrey amendment.

I further ask unanimous consent that when Senator GRAHAM of Florida offers his amendment providing for $15 billion of RTC funding with an additional $15 billion provided on a dollar-for-dollar basis as assets are sold, there be 2 hours equally divided and controlled in the usual form with no amendment to the amendment in order; that an amendment by Senator GRAHAM be followed in the order by Senator SPECTER. We are clearing the time period to be equally divided. I anticipate it will be an hour. But until that is clear I will not specify a time period but will only specify the unanimous-consent agreement will have Senator SPECTER following in the order after Senator GRAHAM of Florida.

Mr. KERREY. Reserving the right to object, and I do not believe I will object, I wonder will the Senator be willing—rather than to say "on or in relation to the Kerrey amendment," is he

willing to agree to make the vote up or down on my amendment?

Mr. RIEGLE. I am not prepared to do that. I say that because I have said it to a number of other people who were offering amendments that the committee is not prepared to accept, that I am going to be offering tabling motions on those amendments.

Having taken that position, having done that with others—I put others on notice that that is my intention—I would not want to make an exception in this case. I say that respectfully in light of the fact that on the 11th we are going to take these matters up—the 11th of April.

Mr. KERREY. I thank the Chair. I do not object.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? If there is none, it is so ordered.

Mr. RIEGLE. I thank the Chair.

The PRESIDING OFFICER. Under the order, the Senator from Louisiana is recognized.

Mr. BREAUX. I understand the pending business will be the amendment of the Senator from Nebraska [Mr. KERREY]?

The PRESIDING OFFICER. Will the Senator repeat his question?

Mr. BREAUX. I understand under the current order my amendment is now in order. And if such is the case, I will send my amendment to the desk and ask it be reported.

Mr. GARN. Mr. President, I have a parliamentary inquiry. I believe the D'Amato amendment is still next. If such is the case, should we not ask unanimous consent to lay aside the D'Amato amendment? Will the Senator ask to lay aside the D'Amato amendment?

Mr. BREAUX. I was asking that. I did not know whether we entered into an agreement which made mine in order or not.

The PRESIDING OFFICER. The Senator will suspend momentarily.

Under the unanimous-consent request that was propounded by the chairman of the committee, the unanimous consent was that the amendment offered by the Senator from Louisiana follow immediately upon the closing debate on the Kerrey amendment.

Therefore, unanimous consent to set aside the D'Amato amendment is not necessary at this time.

The Senator from Louisiana is recognized.

AMENDMENT NO. 26

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX] proposes an amendment numbered 26.

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

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

The amendment is as follows:

At the end of the bill insert the following new section:

"SEC. . STUDIES OF THE USE OF TAX INCENTIVES TO STIMULATE THE SALE OF RTC AND FDIC REAL PROPERTIES.

(a) IN GENERAL.—The Comptroller General of the United States, the Secretary of the Treasury and the Director of the Congressional Budget Office shall each conduct separate studies on the use of a tax credit to stimulate the sale of distressed, income-producing property owned in conservatorship or receivership by the Resolution Trust Corporation and the Federal Deposit Insurance Corporation.

(b) TOPICS.—As part of the studies required under subsection (a), the Comptroller, the Secretary of the Treasurey and the Director of the Congressional Budget Office shall investigate, review and evaluate the feasibility of a two-year trial RTC and FDIC tax credit program commencing on January 1, 1992 that would include the following features—

(1) a $500,000,000 annual cap on tax credits offered by the RTC and FDIC;

(2) a tax credit with a present value of up to 80 percent of the purchase price plus the cost of necessary rehabilitation and completion for the acquisition of property owned by the RTC and FDIC;

(3) the amount of credit would be determined and allocated by the RTC or the FDIC, as the case may be, and could not exceed the amount determined to be necessary to sell the property and could not exceed the amount of capital contributed by the purchaser of the property;

(4) a credit period that would be for 5 years beginning with the taxable year in which the property is purchased and would be earned in 5 equal installments;

(5) a requirement that upon sale of the property, 20 percent of any profits shall be paid directly back to the RTC and FDIC with the remaining profits would be taxed at the appropriate capital gains rate;

(6) a requirement that ownership of the property purchased by a private taxpayer under the credit must be maintained for a period of 5 years in order to continue to receive the credit and sale of refinancing of property before the end of the credit period would not trigger recapture but would cause the cessation of any future tax benefits;

(7) a requirement that funds generated by the credit would be paid directly to the RTC and FDIC;

(8) a requirement that the RTC or FDIC would have to certify is exercised reasonable efforts to sell property in inventory at a price permitted by law without offering the credit and certify that the cost of holding the property will be minimized by such sale;

(9) a requirement that the credits could be used to offset the lesser of $50,000 or 50 percent of tax liability on non-passive income for individuals; for corporations, the credit would be subject to the rules of the general business credit including the maximum amount of income tax liability that may be reduced by a general business credit for any one year;

(10) a requirement that the credit would not be considered a preference item under the Alternative Minimum Tax (AMT) and may not be used to offset tax due and owed under an AMT calculation;

(11) that the programs would not apply to property purchased from the RTC or FDIC after December 31, 1993 except pursuant to an earlier binding contract;

(12) a prohibition against officers or directors of institutions in RTC or FDIC receivership or conservatorship and former owners of the property with respect to which a credit is to be allocated from receiving a credit under this program; and

(13) a requirement that the RTC Oversight Board and FDIC would publish additional guidelines as appropriate for the RTC's or FDIC's use of the tax credit.

(c) FACTORS.—In preparing the studies required in subsections (a) and (b), the Comptroller General, the Secretary and the Director shall consider the following factors;

(1) the net budget impact of any proposal to utilize tax credits to sell RTC- and FDIC-owned properties;

(2) the stimulative effect that a tax credit will have on the disposition of RTC and FDIC properties;

(3) RTC and FDIC ability to dispose of properties without tax incentives;

(4) the carrying cost of properties held by the RTC and FDIC;

(5) the effect on local real estate markets;

(6) the effect real estate markets have on national economic growth;

(7) the effect such a tax credit may have on economically distressed regions; and

(8) whether the revenue to the RTC and FDIC would be enhanced if sold with the tax credit compared to the alternative of holding the property in inventory.

(d) FINAL REPORT.—Not later than 60 days from the date of the enactment of this Act, the Comptroller General, the Secretary of the Treasury and the Director of the Congressional Budget Office shall submit to the Committees on Finance and Banking, Housing and Urban Affairs of the United States Senate and the Committees on Ways and Means and Banking, Finance and Urban Affairs of the United States House of Representatives their final reports containing a detailed statement of findings made, and conclusions drawn from the studies conducted under this section, including recommendations for appropriate administrative and legislative action.

Mr. BREAUX. Mr. President, as we all struggle with what is a very difficult problem for all Members of the Senate, indeed all Members of the Congress, I think most Senators wish there was some magical solution, someway that we could wave a wand and the problems we are facing would somehow disappear and the savings and loan problems would be behind us and we could get back to an orderly movement of real estate transactions in this country. Unfortunately, there is simply no easy answer. There are no easy solutions.

The tenor of this debate is a clear indication that there are major disagreements among Members as to how the problems with the Resolution Trust Corporation and the S&L's should be resolved and should be solved.

The amendment I offer is a relatively simple amendment in that it asks for some help from the Federal Government in looking at some possible solutions, or some possible ways of helping to remedy the problem, or at least to reduce the problem.

The amendment simply authorizes and calls for a study to be done by the

Comptroller General of the United States, a study by the Secretary of the Treasury, and a study by the Director of the Congressional Budget Office, which would concern the possible use of a tax credit to stimulate the sale of distressed income-producing property which is now owned by the Resolution Trust Corporation and by the Federal Deposit Insurance Corporation.

It is obvious that we have an incredibly large problem. The figures I have heard recited are that RTC alone owns more than 40,000 separate pieces of property on their books that they are charged with trying to get rid of.

Indeed, every day that passes the costs associated with maintaining and keeping the repairing and paying the taxes on these pieces of property are adding to the cost that is facing the Congress in solving this problem. We have all seen horror stories, if you will, of properties that have deteriorated while they are being held by the Resolution Trust Corporation. Each day that repairs are not done, that maintenance is not kept up to a standard that is appropriate, that property value is lessened.

What we have seen as a result is a request the Congress is now considering for an additional $30 billion, more money to operate the Resolution Trust Corporation. All of that money, I offer, is not going just for the seizing of savings and loans that are in bad shape. Much of that money we are talking about authorizing today and making available is going for these incidental costs that I just mentioned: for the costs of maintaining properties they have received; for costs of repairing properties they have seized; for costs for paying the taxes on the property that they have seized.

These 40-some-odd-thousand pieces of property cost a fortune for the Government to hold. Every day the Government has these properties, unable to be sold, is a day the cost will continue to increase.

There are studies that even indicate that after 7 years, it would be cheaper for the Federal Government to give away the property than it would be to continue to hold the property and hope they will eventually be able to sell these pieces of property. That is a factual statement. After 7 years—actually, between 6 and 7 years—it would make more sense to the Treasury and to the taxpayer to give the property away at no cost: Please come take this motel; please come take this office building; please come take this resort; or whatever piece of property it happens to be. Just take it for free.

It would actually save the Federal Government more money than continuing to hold it and trying to sell it, even at a reduced price, and yet having to continue to pay all of the costs associated with the RTC holding the property in receivership. So it is indeed very important that we look at innovative ways and creative ways in order to try to help get rid of the property they have on the books.

We could argue until a month of Sundays pass as to how we got into this problem, but right now we are in the problem. I remember just a couple of weeks ago reading about a piece of property in the State of the presiding officer, Florida, about a resort area on the coast of Florida that had been built. It had never been occupied; they had never been able to sell any of the units.

The Federal Government now holds that property on the coast of Florida, and that piece of property has deteriorated. Each week, each month, each year they hold it, it begins to fall, crumble, into the Gulf of Mexico. One day we may be able to sell that property, but I dare say the price we will be able to get for it in that condition will be far less than the price of maintaining it and paying the taxes on it, which the RTC currently has to do.

Therefore, Mr. President, my endeavor is to assist the RTC and the FDIC in finding ways to get these properties sold now, at the earliest possible date, without dragging it out, without eventually being in a position of almost having to give away those pieces of property in order to get them off the books of the Federal Government as the owner and holder in a conservatorship position.

There have been, Mr. President, a number of studies done which recommend some ways which may be of help to the Government in doing this. That is what I am asking. I am asking that a study be conducted by the Federal Government as to whether this idea may be one that could possibly work and give the Government, and thereby the taxpayer, some help in eliminating the burdens that we are facing as we continue to appropriate more and more money to this Federal agency.

My own State, as I am told, is the second largest State in terms of property that has been seized by the RTC and is currently being held in receivership. That is more than States much larger than the State of Louisiana.

For instance, we have more property, I am told, than even the State of California, a State which is probably five times larger in terms of number of residents of that particular State. But we have more property in receivership.

What has been happening, Mr. President, is that as the RTC continues to try to get rid of these properties, they continue to lower the asking price. Every time they lower the asking price, when that property is eventually sold, the problem is that it is sold at a level far below what would normally be a fair market price. When that sale occurs, it also reflects adversely on all the other property in that surrounding community.

There is no question that when an office building in New Orleans is sold, because it has been in receivership, at a third of the normal asking price for that piece of property, that that tends to set the value of other similarly situated office buildings in that surrounding area.

Therefore, while we are costing the Government a tremendous amount of money up front in maintaining and repairing and paying the taxes on that building, we are, in addition, causing unnecessary harm to the local property values in the surrounding areas because, when the sale is finally consummated, it is at such a low value that it is far less than the normal values of property in that area; therefore, everybody is disadvantaged—other property owners, the tax collectors in the vicinity in that particular area, as well as the Treasury and every single taxpayer in America is hurt.

It is clear, therefore, that as soon as we can sell these properties, the better off we all are. As soon as we can sell them at a price that resembles a fair market or appraised price for that property, the better everybody in the community and the State will come out as far as the bottom line is concerned.

There have been a number of studies, Mr. President, in the private sector which have indicated that one approach to help move these properties out of the conservatorship or receivership of the RTC is to provide a tax credit to potential buyers of these properties that have been in distressed conditions. I know a lot of people will say, what in the world is the Senator from Louisiana talking about a tax credit for? We have a huge national deficit; we cannot afford to pay our bills, and here is some fellow coming out on the Senate floor and offering a tax credit.

Mr. President, the studies that I have seen indicate that the Treasury and the taxpayers of this country will do very well, indeed, under a proposed tax credit to help move these properties that we now have on these books. The private studies that I have seen point out that for every $1 of tax credit that would be extended under a program such as I am asking to be studied, it would generate $2 in revenue to the Federal Treasury in return. That is something that I think is a very important point that needs to be considered. For every $1 of tax credit that we would extend to this program in order to get the property moved, it would generate $2 in return revenues to the Federal Treasury.

One may ask, how is that possible? The answer, I think, is relatively simple. When you consider the cost to the Government of maintenance and repair, the taxes, the upkeep on these

properties that we are spending and holding these properties with no sale, and compare that with the possibility of an earlier sale at a higher price, a more fair market value, we see that, No. 1, we are able to sell it at a higher price if there is a tax credit; and, second, and equally as important, we are able to take property which right now is being put to no use at all, is just sitting there and deteriorating, and put that property back into private sector hands, back into the hands of some developer or some realtor who has created ways of making this piece of property produce revenue and income once again.

It is an absolute cinch that as long as the Federal Government holds the property, we are not doing anything with it to make it produce any revenues to the Treasury. We are just spending money every day, paying for the repairs and the maintenance and other things associated with the upkeep. So there is no income coming to the Federal Government while we hold this property. But if we can get this property into the hands of a private investor, perhaps that private investor would be able to rent it, to renovate it, to change its principal function in order to get someone to use this property in a way the Federal Government is certainly not embarking on under the present circumstances and present conditions. Therefore, the private studies that I have seen indicate that it is a plus. It is a plus of $2 for every $1 that is expended.

Let me just spend a couple of moments, if I can, explaining how the study would work and what we envision by the study that we are, in fact, speaking to right now. The tax credit would be a tax credit of up to 80 percent of the appraised value for the acquisition of property owned by the RTC. The type of property we are talking about, I think, is very important to consider. It is not all of the property that the RTC has.

Estimates that I have seen by the RTC is that they presently have about $20 billion, give or take a few dollars when you are estimating, about $20 billion of properties that they have seized over the years that they are now currently holding, having to pay repairs, having to pay maintenance, having to pay the taxes on them while the property sits there and continues to deteriorate.

Of that approximately $20 billion of property that they hold, about $5 billion is what they would term distressed property, property they feel is in such a condition that they are not able to move it in an orderly fashion. That would be $5 billion of distressed property, which would be commercial property.

We are not talking here, it is important to note, under the definitions of what the study would look at, of private family homes or single family dwellings. We are talking about strictly commercial property that has been seized by the RTC, of which there is an estimate that it is $5 billion that they currently have in their conservatorship and receivership operations that would be affected by this proposal, if, indeed, it were to be enacted by the Congress.

I see the distinguished chairman of the Senate Finance Committee on the floor. We have discussed it with his staff and professional staff and with our staff, and I point out that what I am requesting is simply a study. It is very obvious the jurisdiction of any tax credit proposal is appropriately and properly the jurisdiction of the Senate Finance Committee, but this vehicle, the authorization of $30 billion to the RTC, I think is an appropriate vehicle to at least ask for a study of this concept to be done so that they can report back to the Congress so that those of us on the tax-writing committees would have the benefit up front of their recommendations that we could combine with the private industry's recommendations on what a tax credit proposal would do and then to take whatever action would be deemed appropriate after that study is completed and we have that information available.

I do not know if the chairman would like to respond.

Mr. BENTSEN. Mr. President, if the distinguished Senator will yield the floor. He is a valued member of the Finance Committee, and I share much of his concern when he talks about resolution of the problem. I do have concern, obviously, about jurisdiction, as do many. There is some question as to whether this is really proper procedure insofar as a tax credit, thinking that if you lower the price, you end up the same way and you at least do not have the guise of a tax credit. I am also concerned about the responsibility for making up the loss and what that would do to us. I also have concern about using some other sources where you can get this kind of information, talking about the CBO or authority such as that, that carries a great deal of weight.

Mr. BREAUX. I respond to my chairman that I share his concerns as well as to who we get the information from and also the cost of the program. The reason I think it is helpful to us to get a broad recommendation, at least, or some views through a study from a Federal agency is that I have had an opportunity to see one private study that indicated, on the cost of the program that they have projected out, that for every $1 of tax credit that would be utilized in a program such as this, that it would, in fact, generate $2 in return to the Federal Government. That is based on the fact that the property would be able to be marketed a lot sooner, at a higher price, and that the Federal Government, of course, would be relieved of repairs, maintenence, and taxes that they are paying out on all of these properties that they have seized. Their view and their economic studies indicate that it is a $2 return for every $1.

My point, also, in asking for a study to be done by the Government is to get another view so we have as much information on what the economics of this proposal would be so we could use that and make a decision.

Mr. BENTSEN. I understand that. I appreciate that point of view. I hope that the Senator would also look at the possibility of CBO doing that kind of study. I cannot help but believe that the taxpayers pay for it either way. When you are talking about a tax credit, you are talking about a reduction in the price. When you are talking about a warehousing of properties, as with the numbers that the Senator has given, I do not question the enormous costs of holding on to assets such as that. But it would seem to me that a reduction in price causes the same kind of movement of real estate held by Resolution Trust as does a tax credit. The result is it finally comes back to bite us anyway.

Mr. BREAUX. As the Senator knows, Texas is in the same situation as my State in the number of properties being seized. The problem is—I know the Senator knows this—as they continue to reduce the price—the study will actually show that after 6 or 7 years it would be cheaper for the Federal Government to actually give the property away than continue to hold it and try to sell it.

But what is happening, as they dramatically reduce the price each month to try to get rid of the property, when it is finally sold somewhere out there 4 or 5 years, it decreases the value of the property in the surrounding area. The office building becomes a standard for other property and it depresses the local property values in our respective States.

So I think anything we can do to help them move it quickly at close to an appraised value helps the market values of the rest of the properties that still remain, hopefully, viable in a sense of recovery.

I point out that we also ask in the amendment that the CBO, in fact, do one of the studies, so we get the Congressional Budget Office also giving us the information from their perspective as well.

Let me make a couple of other points as to what we are trying to do through the use of a tax credit. I know that there have been other areas in which we, in fact, have used a tax credit to inspire or encourage certain types of activities deemed to be in the national interest that, indeed, have worked very well. I mention for one the low-income housing tax credit where, in fact, to

try to get builders to build housing for low-income people in this country, which is in the national interest, Congress adopted a low-income housing tax credit to encourage that type of activity. Low-income housing that would not have been built, in fact, is being built, and a great deal of the credit has to go to the tax credit that was adopted.

The targeted jobs credit again is something that is deemed to be in the national interest. To target their jobs in higher unemployment areas, a tax credit was adopted in order to accomplish this. It is, in fact, working.

I would also mention the tax credit for research and development, something that the Federal Government can do and has done to encourage pure research, which may not be economically the right thing to do from a bottom line standpoint, indeed, is a good thing to do in terms of overall long-term development. So the Congress adopted a tax credit to encourage companies to do something that may not be economically profitable right now, but with the tax credit it is a good economic decision to engage in pure research.

Those are three examples of where tax credits have been utilized to help accomplish a goal that is in the national interest and one that, in fact, is working because of the tax credit.

Let me just mention specifically how this tax credit would be designed to work. I mentioned earlier that it would be a tax credit for up to 80 percent of the appraised value for the acquisition of these distressed properties—I emphasize distressed properties—that are currently owned by the Federal Government. The credit would be limited to the amount determined to be necessary in light of other sources of financing to provide the RTC with the selling price it desires.

In other words, the RTC could look at an office building, for instance, and see that it is a distressed piece of property, make the determination it is such if they have not been able to sell it through normal channels, even through reducing the price or other efforts they have made, and then apply part of that tax credit in order to get that property sold.

They do not have to go all the way up to 80 percent. It could be a 50-percent tax credit or it could be anything up to 80 percent of the appraised value of that particular distressed property.

The funds generated would go directly to the RTC under this proposal. The credit period is intended to be spread out over a period of 5 years. Whoever is the purchaser of these distressed properties would have 5 years, beginning with the taxable year in which they acquire the property, to use their tax credit, and it would be spread out over five equal installments.

So the tax credit available would be $50,000. Obviously, over 5 years, that buyer would be able to take a tax credit of $10,000 per year. A good point, obviously, is that during that period the property is in commercial business, the property is earning revenues, the property is being put into the private sector as opposed to the Federal Government holding the property with no income being brought in.

One of the proposals that we are asking the departments to study is a requirement that the RTC—and I also point out that the FDIC would be under the same guidelines—would have to show that they tried to sell the property under normal terms, that they used, in fact, reasonable efforts to sell the property they had in inventory at or near the appraised value.

In other words, this tax credit is not intended to just automatically apply to every piece of property that is a distressed piece of property. The FDIC and the RTC would have to show that they have made reasonable efforts to market this property using normal selling procedures and they tried to sell it at its appraised value. If they showed that they still could not sell it despite using these reasonable efforts, then they could utilize the proposed tax credit. Ownership of the property sold under this arrangement would in fact have to be maintained for a period of at least 5 years.

In other words, what we are trying to accomplish is getting property that the Government currently owns into the hands of private owners and not let them spin it off the next day, not to let them buy it on Monday and sell it again on Tuesday and benefit from the tax credit.

So we have in this proposal a requirement that ownership of the property, in fact, would have to remain for a period of at least 5 years beginning at the time they acquire the property.

These tax credits also would be limited. In other words, we just do not have an unlimited tax credit. If a person buys an office building that is a $10 million, $20 million piece of property, they would not be able to take a tax credit for the whole 80 percent of that selling price. We have a limit on how much would be available as a tax credit not only as a percentage but also as an actual limit. That limit is that the credits would be able to offset the lesser of $50,000 or 50 percent of the tax liability for individuals.

In other words, an individual would be able to take a tax credit of no more than $50,000 spread out over a 5-year period. That would be the maximum. It could be lower than that if 50 percent of his tax liability would be lower. He would have to take the lower of the two, $50,000 or 50 percent of the tax liability that he would have as an individual.

Now, if you are dealing with corporations, the credit would be subject to the rules of the general business credit including the maximum amount of income tax liability that may be reduced by a general business credit for any 1 year. I understand it is $25,000 plus 75 percent of the remaining tax credit.

Also, I would point out that the RTC credit, the FDIC credit we are talking about will not be considered a preference item under the alternative minimum tax and may not be used to offset taxes that are due and owed under an AMT or alternative minimum tax calculation; that you could not reduce the minimum tax that is required through the use of this particular tax credit if in fact application would accomplish that.

So the bottom line, Mr. President and Members, is that I think everybody can agree that the moving of these properties held by the Federal Government right now as quickly and as expeditiously as possible and at a price that is as close to the value of those appraised values is in the interest of everybody. It is in the interest of the Federal Government. It is in the interest of this Congress, faced today with having to authorize another $30 billion to make this program work. It is, on the bottom line, in the interest of every taxpaying citizen of this country because every day that those properties sit out there exposed to the elements, exposed to the normal depreciation and deterioration, the value of those properties is lower and lower and lower.

And that simply means that the Federal Government eventually will have to sell those properties at a lower and lower price and thereby offsetting less and less of the debt that we have.

I bet we will be back here again, and there will be another request at some later day for another $30 billion or another $50 billion. And the reason they will say is because we have 40,000, 50,000, 70,000 pieces of property we cannot get rid of. We have to pay for the maintenance. We just do not know how to deal with these properties. Therefore I think if we can come up with some ideas to help them move the property indeed we will be performing a very valuable public service to the taxpayers of this country.

I point out again that the private studies I have seen indicate that for every dollar of tax credit that will be expended we would be generating $2 in revenue; $2 for every $1 we spend.

Mr. President, I argue that we do not normally get a deal as good as that in anything that the Federal Government is normally involved in. Any time you can get $2 back for every $1 we expend I would say it is a deal we cannot afford to pass up.

This is the study. It is a private study. They indicated this is what would happen. Therefore, Mr. Presi-

dent, the reason I am asking for this amendment to be adopted by the Senate today is so simply we can get some other information on whether this study we now have seen is in fact accurate and therefore will give some guidance to the Senate Finance Committee to move in this direction, and to craft this type of a program and do so as quickly as we possibly can.

Again, the amendment simply authorizes separate studies. It does not put into effect a tax credit at this time at all. It just requires separate studies on the use of this type of tax credit as I have attempted to outline today to stimulate the sale of the stressed income producing property that is currently owned in conservatorship or receivership by either the Resolution Trust Corporation or the Federal Deposit Insurance Corporation be conducted, and that it will be conducted by the Comptroller General of the United States, by the Secretary of the Treasury of the United States, and by the Director of the Congressional Budget Office.

Mr. President, I think we need their thoughts on this very important proposal. We need it to be done as expeditiously as they can do it, and in a manner that gives us the correct and accurate information that we want so we can compare it with the private studies. I hope that ultimately the Congress can see fit to enact this type of tax credit to help reduce the burden on an already far too overburdened taxpayer that we talk about—this particular problem facing us at this time.

Mr. President, that concludes my remarks. Noting no one else here at the time, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll, and without objection, the time of the quorum call will be charged against the managers.

The bill clerk proceeded to call the roll.

Mr. BREAUX. 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. BREAUX. Mr. President, during the quorum call, I had an opportunity to engage in a conversation with the distinguished chairman of the Banking Committee, and the distinguished ranking member, about the pending amendment, which authorizes in this bill a study to be done by three agencies that I felt were competent on the proposal that we have been discussing. I would pose the question, if the distinguished ranking member and the distinguished chairman of the committee would be willing to join me in requesting the Federal agencies to, in fact, undertake the studies and report to the Congress, if they would be willing to join me in that request, with the modification that this study be completed within the period of 120 days, as opposed to the 60 days in my amendment, and that the study be done by the Comptroller General of the United States and the Director of the Congressional Budget Office, and to leave out the Secretary of the Treasury, but all other aspects of the amendment would be the same and would be accomplished in our letter to those governmental bodies.

I will yield to the chairman.

Mr. RIEGLE. I thank the Senator from Louisiana. I appreciate his willingness to move in this direction. I think this is a good way for us to gather the independent opinion within the Government that we ought to have and see what those findings are. I think the timeframe of 120 days is an appropriate one to get good work done, but in a period of time that does not overload those organizations, who are asked to do other studies, as well, and analyses of different kinds. I think this is a good answer, and I am prepared to join the Senator, and I believe that is also the view of the ranking minority members.

Mr. BREAUX. I yield to the distinguished ranking minority member.

Mr. GARN. I thank the chairman and the Senator from Louisiana. I am happy to sign such a letter requesting those studies. I think it is an appropriate way for us to gain information without adding it to this particular bill.

Mr. BREAUX. I thank my distinguished colleagues.

With that understanding, Mr. President, my goal is to get the facts from the Government, so we can compare them with the facts from the private sector, and then use that information to make a determination as to how the Senate Finance Committee should proceed on this issue.

With that understanding, I ask unanimous consent that my amendment be withdrawn at this time.

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

The amendment (No. 26) was withdrawn.

Mr. RIEGLE. Mr. President, I say to the Senator from Louisiana that I want to indicate again that I appreciate his willingness to work with us on this and let us set out to get that letter drafted, signed, and sent within the next few days, so we can get this clock running.

Mr. President, I have no need to speak at this time.

If there is no one seeking the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

S. 543's TOO-BIG-TO-FAIL PROVISIONS

Mr. RIEGLE. Mr. President, I rise to elaborate on the too-big-to-fail provisions of S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, which I introduced yesterday.

Certain news stories have suggested that my bill would create a taxpayer-financed system to implement a too-big-to-fail policy for very large banks. That is a mistaken interpretation. This legislation is specifically designed to stop the current practice of bailing-out uninsured depositors in the big banks, based on the existing theory that such banks are considered too big to fail. That practice must end and this legislation will end it.

The central purpose of S. 543 is to put an end to the too-big-to-fail policy by eliminating the practices that give rise to it. Careful analysis of this bill will show that the too-big-to-fail provisions of S. 543 actually represent the most far-reaching and comprehensive legislative effort yet advanced to deal with and solve this serious problem.

Most important, the bill's provisions requiring prompt corrective action are specifically designed to make certain that regulators move early and aggressively to address and resolve the problems of troubled institutions before they become insolvent. To the extent those new protective provisions work as intended, the present practice of bailing out insured depositors with deposit insurance funds in banks deemed too big to fail, will never arise again.

In addition, the bill further addresses the broader issue of systemic risk to the entire banking system posed by the possible failure of a major bank by attempting to ensure that big banks that are in trouble cannot hold large amounts of interbank deposits. S. 543 seeks to make sure that big banks in a weakened position are severed from the rest of the banking system, so their possible failure cannot directly damage the health of other financial institutions.

Finally, the bill targets the total elimination of the FDIC's ability to implement a too-big-to-fail policy by January 1, 1995, a time period over which other major corrective regulatory changes would be implemented.

The bill absolutely does not replace FDIC funding of too-big-to-fail policies with taxpayer funding, nor does it create any new role for the Federal Reserve in resolving too-big-to-fail situations.

The bill does, however, leave intact the Federal Reserve's existing authority to make lending through its discount window in a true extraordinary, emergency case situation where the prospective failure of an individual bank is deemed to threaten an imminent collapse of the entire financial system. While such an extreme hypo-

thetical case sits at the very outer bounds of realistic possibility, it could occur and therefore it is necessary to have a contingency mechanism in place if it is every needed.

In such an extraordinary circumstance, the Federal Reserve could use that emergency authority to save a large bank from failure on the Fed's own initiative, but only by taking a loss on a loan from the Federal Reserve discount window. The Federal Reserve has never done that in the past and nothing in S. 543 would require it to do it in the future, so this represents no change whatever from current law with regard to Federal Reserve authority. That standby emergency authority exists today, and would be continued in the future. But to construe that extraordinary, emergency procedure at the Federal Reserve as a creation of this bill or a continuation of the FDIC's current too-big-to-fail policies, is to completely mistake the fact and the intention and purpose of this legislation.

It is fair to say that maintaining this limited, emergency, backup authority is designed to help create maximum early awareness among bank regulators to cause them to intervene early in troubled banks and take corrective action long before any extraordinary questions of systemic risk can arise.

Mr. President, I take the time to elaborate on that to the extent I have just done so because I do not want there to be any confusion in this area, and there ought not to be.

I thank the Chair and I yield the floor.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

RESOLUTION TRUST CORPORATION FUNDING ACT

The Senate continued with the consideration of the bill.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the pending business, an amendment by the Senator from New York [Mr. D'AMATO] be laid aside.

The PRESIDING OFFICER. Under a prior order, it is so ordered.

Mr. GRAHAM. Mr. President, there is an unanimous-consent agreement under which the amendment which I offered last week would be brought up under a "2-hours equally divided" understanding. I now ask to take up the amendment which I previously filed.

The PRESIDING OFFICER. The Senator is correct. An order has been entered granting 2 hours to be divided in the usual fashion. The Senator is recognized to present his amendment as soon as the clerk has read the amendment. Then, the 2-hour time limit will apply. The Senator will be entitled to control 1 hour, the opposition 1 hour.

AMENDMENT NO. 14

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows.

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 14.

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

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

The amendment is as follows:

Strike section 2 of S. 419 and insert the following:

SEC. 2. RESOLUTION TRUST CORPORATION AUTHORIZATIONS.

Section 21A(b) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)) is amended by adding at the end the following:

"(15) ADDITIONAL IMMEDIATE FUNDING.—

"(A) IN GENERAL.—In addition to the sums authorized by paragraph (14), the Secretary of the Treasury shall make available to the Corporation $15,000,000,000 from monies not otherwise appropriated.

"(B) LIMITATION.—No sums appropriated by subparagraph (A), or by Paragraph (14), may be obligated after September 30, 1991, except in the case of a resolution transaction with respect to which a bidder has been selected as of such date.

"(16) ADDITIONAL MATCHING FUNDING.—

"(A) IN GENERAL.—For every dollar in cash dividends the Corporation receives after March 1, 1991 from a receivership estate under its control, where such receivership was established on or before March 1, 1991, the Secretary of the Treasury shall make available to the Corporation a matching dollar from monies not otherwise appropriated.

"(B) LIMITATION.—The matching funds appropriated by subparagraph 16(A) may not exceed $15,000,000,000.".

Mr. GRAHAM. Mr. President, by coincidence, the Presiding Officer was in the chair when I made some preliminary remarks on this matter last week, so I will attempt to be brief and avoid excessive repetition.

Mr. President, as you will recall, the amendment which I offer attempts to deal with two problems which I see the Nation faces in the effort to effectively, efficiently, and at the least cost to the taxpayers, resolve the savings and loan debacle.

The first of those is the need to provide adequate funds to the Resolution Trust Corporation so that it might, on an orderly and timely basis, continue the process of closing down those institutions whose continued operation would represent a threat to the safety and security of the financial system.

Second, after now some year and a half of operation of the RTC, we have an institution which holds approximately $144 billion of assets. I believe that a second issue before us today is either ratify the current practice or establish congressional intent that a different practice be provided, relative to the effective disposition of those assets.

It is to those two issues—the need to provide active funds for continued resolution of those institutions which have been identified as a threat to the safety and soundness of the financial system and, second, to provide a strong congressional message that it is our intent there be a more effective disposition policy—that this amendment is directed to.

The amendment would provide immediately to the Secretary of the Treasury $15 billion to be available for the resolution of those institutions which have been identified as justifying such determination. That number, Mr. President, happens to be the figure that has been identified by the RTC as the amount required to close institutions on their current list.

The second $15 billion would be made available to the RTC, but only as the RTC, on a dollar-for-dollar basis, disposes of its current assets. That is, there would be a requirement of a disposition of assets as a condition of eligibility to receive the second $15 billion.

I would like to take some time to briefly explain the process with which we are dealing, and then to discuss why I think there is clearly a policy in place now that lacks that sense of urgency of moving forward with the disposition. Finally, what are the consequences of the current policy? I then conclude with the call for the adoption of my amendment as the congressional statement of the desire to have a new, greater sense of urgency in the disposition of RTC assets.

To explain the process, let me use a hypothetical example which will stand for the totality of the some 353 institutions to which this process has been applied to date, and an even larger number to which it will be applied in the future.

My hypothetical institution has $1 billion of insured deposits. The institution has been taken over by the RTC because of a finding that its previous activities represented a threat to the safety and soundness of the system.

One of the things that RTC does during its conservatorship period, by holding this institution as a conservator—still attempting to manage and run the institution—is to do an evaluation of the assets of the firm. In the 353 institutions that have been closed thus far, there has been a valuation placed on assets which represents approximately 60 percent of the amount of insured deposits.

So, assuming in our hypothetical it was consistent with the general pattern, we would find a valuation of assets of $600 million.

At this point we would begin the process of terminating the institution. How are we going to pay the billion

dollars owed to the insured depositors? We would pay it through two sources.

One is lost funds. Those are the funds that are recognized as being never available for recovery. That is the money which is the difference between the total of insured deposits and the value which has been placed on the assets.

As to the second, $600 million, those funds are borrowed from the Federal financing bank, pledging as collateral for that borrowing the $400 million of valued assets which were held by the institution in its conservatorship form.

So, from two sources, $400 million of lost funds and $600 million of borrowed working capital, the $1 billion is provided. The depositors are made whole.

What we are being asked to do today, Mr. President, is essentially provide an additional $30 billion which can be utilized for future lost funds. I am going to focus my attention on how the assets which have been assumed by RTC—in my hypothetical example, the $600 million of assets—how well those assets are being managed, and particularly how well they are being transferred from the public sector back into the private sector.

I think the evidence is very compelling that there is a lack of urgency and a lack of performance in terms of disposing of RTC assets. We have just received the RTC review, which is the monthly report of the status and operation of the Resolution Trust Corporation. That is dated December 31, 1990.

As an aside, Mr. President, I hope one of the consequences of this discussion that we are having this week will be to insist upon more timely and complete financial reporting of what the Resolution Trust Corporation is doing. It is very difficult to arrive at reasoned assessments of performance, given the delayed and somewhat inadequate financial data which are being made available to us.

Having said that, with the information that is available, comparing the receivership assets of the Resolution Trust Corporation from July 31 to December 31, 1990: On July 31, RTC, in its receivership capacity, held 40.2 billion dollars' worth of assets.

If this institution was aggressively attempting to dispose of assets, one might hope that by December 31, 1990, 5 months later, that there would have been a reduction in the total amount of assets held by RTC in receivership. Was that the case? Hardly. In fact, the amount of assets had grown to $58.1 billion, or a $17.9 billion addition to asset holdings in the 5 months from July to December.

The largest single category of those increases was in performing loans. Performing loans in July were $14.7 billion of total assets. By December, they were $29.2 billion; a $14.5 billion increase in performing loans.

I underscore that, Mr. President, because I believe there has been a red herring injected into this whole discussion, and that is, the reason RTC is having so much difficulty disposing of assets, is because they are holding some exotic properties that it is to find a buyer for—particularly, real estate.

The fact is, real estate, on July 31, represented $6.7 billion of the total assets of RTC in receivership.

For real estate, on July 31, 1990, it was $6.3 billion and, by December 31, it was $7.7 billion. As amenable as the $1.4 billion increase in real estate is, it is not the dominant factor in terms of the assets owned in receivership by RTC or an adequate explanation of why RTC has not effectively moved to dispose of its assets, which are predominantly performing loans.

The second evidence of the lack of a sense of urgency is an attitude advanced by the Secretary of the Treasury when he appeared before the Senate Banking Committee on the 23d of January. He was there in his capacity as the Chairman of the Oversight Board, the Board created as part of the savings and loan bailout bill to provide general policy direction to the Resolution Trust Corporation.

After having gone through a considerable exposition of the state of the Resolution Trust Corporation, on page 6 of the Secretary's prepared remarks, the following paragraph appears:

> At our board meeting last week, however, Chairman Seidman—

Chairman Seidman being the Chairman both of the Federal Deposit Insurance Corporation and the Resolution Trust Corporation—

> told us that there is a new roadblock that will further delay asset sales. The RTC board has been advised that potential personal liabilities may be imposed upon directors, officers, and employees of the RTC and the oversight board in connection with the RTC's securitization program, as well as in connection with RTC's other asset disposition activities. Chairman Seidman indicated that a legislative solution to the problem is needed and that his staff is currently drafting proposed legislation to address this matter. The administration is reviewing this issue.

Mr. President, I read the full text of the paragraph because, to me, that was the most important statement in Secretary Brady's presentation to the committee, and it was essentially the statement that we have shut down, that we have not only suspended our proposals for securitization, but, to use his words, we have also terminated disposition in connection with RTC's other asset disposition activities. The passivity with which that very fundamental restraint was presented is, to me, further evidence of a lack of urgency in terms of moving forward with asset disposition.

Mr. President, why is it desirable to accelerate disposition? What difference does it make? Let me suggest the following: First, it is to avoid the increased cost which will be a necessary component of continuing to hold these assets. There is depreciation, there are carrying costs, there are maintenance costs, there are other incidents of ownership which will reduce the ultimate recovery to RTC and, thus, to the taxpayers by holding these assets. To use the example of real estate, according to the General Accounting Office, in the life of RTC, there has been approximately $5 billion of book value of real estate disposed of; that is, $5 billion of that valuation that was given to property at the time that it was still in conservatorship. Part of that $5 billion, which, in my hypothetical example, would have been the $600 million of value placed upon assets; $5 million of those book value real estate assets have actually been sold, but they have been sold for a value, really a cash return value of $3.9 billion. So we have suffered over a 20-percent loss in the $5 billion of real estate that has been sold, loss being defined as the difference between the value assigned in conservatorship and what was realized at sale.

Second, the effect of the continued existence of this enormous amount of property, everything from performing and nonperforming mortgages, mortgage-backed securities, securities of various types, real estate, other properties, on the general economy has been a significant contribution to our current economic distress. Many Members who a year and a half ago were concerned that accelerated dispositions might constitute an adverse effect on the economy—that is, by dumping assets into an already weak economy—now have concluded that it is the very prospect of this large overhang on the market which is having a depressing effect.

Third, Mr. President, this has been a bureaucratic buildup. We now have 5,000 people working for the Resolution Trust Corporation attempting to dispose of all of these assets and institutions which they hold. The GAO has estimated that at the current rate of disposition, RTC will be in existence into the 21st century.

Finally, Mr. President, I believe that there is a serious problem in terms of political accountability. If I could return to my hypothetical example, if that $600 million of valuation of assets is inflated, if, in fact, it should have only been $500 million, which recent history indicates may well be the extent of inflation of value, what is the consequence of that? The consequence of that is that today we are able to avoid having to come forth with a sufficient amount of loss funds in order to fill the real extent of the cost to the taxpayers. We are burying a substantial amount of losses that will eventually have to be paid by the overvaluation of assets. We are disguising that overvaluation by failing, refusing,

taking a passive position relative to the disposition of assets. So we continue to carry on the Resolution Trust Corporation's books a value that is not going to be attained when those assets are put to the test of a fair market value assessment.

Let me give one further evidence of that; the fact that we are carrying a substantial amount of water on our RTC receivership books. We have 352 institutions which have gone through conservatorship. They have had a value placed on their assets. You would think there would be people out there in the private sector who would look at an institution and say, you have put a value on these assets of $600 million. That is a reasonable value. I am willing to pay you $600 million in order to gain control of that valuable cluster of mortgages, of real estate, of whatever that particular institution happened to have held. You would think that there would have been an external marketplace response to the acquisition of that cluster of assets.

Out of 353 institutions, Mr. President, how often do you think that has happened? Do you think it has happened in maybe half the cases? Maybe a quarter of the cases? Maybe in 10 percent of the cases? Do you know what the answer is? Once in 353 times, when RTC has said that it is what the assets are worth, on one occasion has the person actually come forward to be willing to put his or her money behind that valuation.

That raises in my mind a serious suspicion that there is a lot of puff, a lot of cloud, water in those assets; and the political effect of that, Mr. President, is that we are going to carry that past our period in this election cycle, maybe even past this decade into another century. When the Resolution Trust Corporation comes to the final accounting, when it does that final wrapup, we are going to have to tell our children—maybe by that time our grandchildren will have grown into income-earning status as full taxpayers—you are going to have to come up with the money to pay that difference; you are going to have this additional unexpected present added to your generation's obligation to pay off our generation's failure to properly regulate and manage this industry.

I believe that we have not only a legal but a moral obligation to face our obligations now, not to continue to push them into the future; and the surest way to do that is to have an active disposition policy that will cause us to recognize the real value of these assets now, not in the future.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Florida [Mr. GRAHAM], amendment No. 14. Senator GRAHAM has 40 minutes; the manager of the bill has 60 minutes.

Who yields time? The Senator from Florida.

Mr. GRAHAM. Mr. President, I yield 10 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 10 minutes.

Mr. ADAMS. I thank the Senator from Florida for yielding this time.

I want to speak in favor of proposals such as those that have been offered by Senator GRAHAM of Florida to impose stricter controls over the administration of the Resolution Trust Corporation.

I will support this amendment, as I have some of the others that are trying to correct the serious problems now surfacing at the RTC.

I am for saving the taxpayers money during the course of the S&L cleanup operation. So far, I have not seen much of that.

Before getting into a discussion of the need to reform the RTC, we need to remember that we are discussing the need for another $30 billion to deal with the savings and loan crisis. This crisis is a result of deregulation by successive administrations in the 1980's and their failure to exercise sufficient oversight and controls over the savings and loan industry during that decade.

Let me state my prejudices for the record. I approach this problem as an oldtime populist and an oldtime reformer, and, yes, a regulator. As Maximum Brock, I want to investigate, try and convict the crooks—to the maximum extent possible—take back their assets, and put the S&L cheats in jail.

Unfortunately, throughout the 1980's, reform and regulation were not in vogue. Though I was not elected to this body until 1987, I saw from the sidelines how rampant and unchecked deregulation overran everything and anything in its path.

I regret in many ways I was not able to be part of the Senate and to be part of the fight to rein in the S&L industry. The savings and loan industry should never have been part of the deregulation philosophy. It was an industry established to take care of the everyday person. It was established to provide necessary money to help the first-time home buyer buy the first house. It was never supposed to get involved in everything from highrise buildings to highflying junk bonds.

There are two things that governments should regulate: Monopolies and money. If they cannot control these things, the U.S. Government is in real trouble, and that is what has occurred here. Before discussing what we need to do today, we must first understand the mistakes of yesterday.

The primary reason for creating the RTC in the first place was to pick up the pieces of an industry nearly destroyed by the unchecked campaign of industry deregulation. Today, we must make sure we do not repeat the same mistakes of a decade ago. The best way to ensure that the RTC becomes part of the solution instead of part of the problem is to begin working on amendments such as those offered by the Senators from Florida, Nebraska, and Iowa, by learning from the mistakes of the 1980's, and start exercising greater oversight and reform of the RTC.

The American taxpayer deserves much better than the RTC as it is now operating. After all, it is they who are footing the bill for cleaning up this mess. The taxpayers have so far failed to get a good return on the money they have invested in the Resolution Trust Corporation.

As their Representatives, we must make sure the hard-earned money of taxpayers is not wasted by simply throwing money at the problem. We have to ensure that the savings and loan cleanup proceeds quickly and efficiently.

It is clear that the RTC has failed to learn from the lessons of the past. As I have listened to this debate and talked with my colleagues, I find even the defenders of this legislation have acknowledged that there are serious problems with the Resolution Trust Corporation.

In support of these concerns, the General Accounting Office, in testimony before the House Banking Committee, pointed out the organizational and oversight problems of the RTC. These are some of the points it raised.

First, the RTC's performance in marketing and selling real estate is disappointing. That is what the amendment of Senator GRAHAM is attempting to redress.

Second, it found the RTC lacks a comprehensive system of securities portfolio management for the disposition of financial assets, as well as an information system capable of maintaining a loan asset inventory. They do not know even what they have to sell. It also found that the lack of direction for managers of the thrifts in conservatorship contributed to the increasing delays in resolving those institutions.

In addition to these concerns, institutional oversight of the RTC must be reformed, and that is what Senator KERREY attempted to ensure. We have to have a strong oversight body over the RTC. Secretary Brady is apparently not spending any of his time on this problem. Then there's Mr. Seidman, who is already running the FDIC. Here we have in charge of the RTC, this huge institution responsible for selling assets, taking care of bankrupt concerns, and looking over mergers, two people in charge who already have significant jobs with equally significant responsibilities.

I hope some of these amendments will begin to pass, because if they fail, the current oversight structure will

fail to meet the necessary criteria for the RTC to begin spending taxpayers' funds wisely and efficiently.

Mr. President, I know from the phone calls, letters, and faxes I have received from my constituents that they are clearly mad at the current situation. They are concerned about the delay of asset and property sales even though buyers are ready to buy property.

They are concerned, in cases where there is no competitive bidding, about mismanagement. They are outraged about the fact that they have to pay for the savings and loan cleanup in the first place. So, as their elected Representatives, we have a responsibility to correct this problem before committing another dollar to the savings and loan cleanup.

I think it is important for everybody to understand how much money we have committed so far. It is not as though we have not committed funds for the RTC already. The legislation before us authorizes an additional $30 billion on top of the $50 billion we have already approved in 1989. But that is not the grand total. The Financial Institution Reform Recovery and Enhancement Act of 1989 gave the RTC the authority to borrow from the Treasury to create a working capital account. That was to allow the RTC to resolve problem thrifts. But the RTC has still not resolved the problem thrifts. I do not believe there is anyone at the RTC, FDIC, or the Treasury Department who can look me in the eye today and tell me that the American taxpayer will not be faced with a balloon payment, and more tax dollars, in the future. In other words, this is not going to complete it. So in addition to the $50 billion we have appropriated and the $30 billion asked for in this legislation, the General Accounting Office has found that by December 31, the RTC has borrowed an additional $63 billion. Mr. President, this amounts to committing $143 billion for cleaning up the savings and loan industry. And that doesn't include interest. It is time we get some accountability.

I promised the citizens of the State of Washington thorough reform and cleanup and that I would remain vigilant and keep their best interests in mind. I intend to keep that pledge. I am voting for this amendment to clean up the weaknesses in this bill. I also want it known that I oppose this bill as it now stands. Some have suggested we just quietly pass it and move on to some specific reforms later. I just cannot agree with that alternative. We have been pouring money in an effort to solve this crisis for 4 years. The bill before us, which calls for sending another $30 billion with no strings attached, is not going to solve this problem.

Mr. President, this bill needs not only to be debated but amended. Our taxpayers deserve this open debate and not quiet passage. The worst thing we can do is throw good money after bad without correcting RTC practices. That is why I am supporting this amendment and will support others designed to reform the RTC. If we cannot reform the RTC now, then we should oppose the current bill until those necessary reforms are made. American taxpayers deserve no less from us.

I thank the Senator from Florida.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM. Mr. President, I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. I thank the distinguished Senator from Florida for yielding.

Mr. President, I want to thank him for offering this amendment, which I think makes a great deal of sense and provides a package of incentives that the RTC needs. On the one hand, nobody wants to provide funds so that the RTC can spend more money to bail out the failed S&L's. But I think we know, responsibly, that steps are going to have to be taken to allow the RTC to move in on those failed institutions, to resolve the failures, and to do so before the drain on the Treasury becomes greater as troubled S&L's hemorrhage more and more and more.

I need only remind my colleagues of what happened in previous years when funding was not provided, when there was not an aggressive move on this. We saw the collapse of a lot of S&L's. We saw a further hemorrhaging and a greater and greater cost to the taxpayer.

On the one hand, what the Graham amendment does, and I am pleased to be a cosponsor of the amendment, is to say we need to take responsible action to make sure the RTC has adequate resources. On the other hand, the amendment also makes very clear that we do not believe that the RTC is operating with the kind of urgency and the kind of dispatch that we expect. We have heard over and over and over again about the RTC being this enormous bank, bigger than Citibank, largest landowner in the country, all of the horror stories about the RTC not acting as expeditiously and a urgently as it should.

The initial concern, Mr. President, 2 years ago, was that there was going to be a great deal of dumping of RTC assets. That has not occurred, thankfully. Unfortunately, the RTC has moved too far the other way. What this amendment does is provide a set of incentives to the RTC, to say to them, "You all are going to have to be accountable for some of your own financing, and you are going to have to unload some of the significant resources available."

All of us, Mr. President, have heard horror story after horror story of constituent groups who are trying to get decisions out of the RTC. All of us hear stories about constituents trying to buy property, and the RTC will not act. Even though the individuals willing to buy it have perfectly good financing and the cash available, they cannot get the RTC to act. It seems to me that, following the provisions of the Graham amendment, we build into the RTC incentives that are going to push the RTC to act in many of these situations and to recover some of their working capital out of resources that the taxpayers already own.

So I think this is a responsible thing to do in terms of resolving the S&L's. I think it also provides the kind of incentives needed to make sure that taxpayer interests are better protected, and I urge my colleagues to support the amendment offered by the distinguished Senator from Florida. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent to print in the RECORD various newspaper articles and other statements relative to the current condition of the Resolution Trust Corporation and its sale of assets.

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

[From the Wall Street Journal, Feb. 13, 1991]

THE RTC'S NATIONAL MONUMENTS

The Tennessee Valley Authority, Mount Rushmore, the Capitol Dome, the Resolution Trust Corporation. We just wanted to hear what it will sound like, maybe a century from now, when the RTC is an aged part of the American landscape, still trying to unload nationalized real estate seized back in the great savings-and-loan debacle of the previous century. As for now, the RTC stands as a late-20th-century monument to the gridlock of Washington politics.

Let us note up front that the agency's top people want to do the right thing. When RTC officials do speak, they talk the right game—move out the merchandise. Alas.

Actual properties, as distinct from loans secured by real estate, are at 12% of the assets RTC accumulated from 548 busted thrifts, but their share of the mix is growing. By year's end, the RTC had assumed $16.6 billion in property from S&Ls seized over five years and sold less than a third of it. Projecting out, it appears that more than $60 billion in real estate may come into the RTC's hands before the S&L extermination project is played out. This is less than 1% of the U.S. stock, but it's not penny ante, either. The longer this property remains in the hands of the agency assigned to protect its value, the more the asset suffers.

It is of course true that today's real-estate market, particularly for commercial-office buildings, is not robust. But there is a market at some level for these seized assets, with buyers that buy, sellers that sell and prices that clear. Why can't the RTC, created by the hellish FIRREA law of 1989 to get such assets off the government's books, do just that?

Well, for starters, it's an ad-hoc government agency that is supposed to consolidate the portfolios of hundreds of separate operating units—some being disbanded, others newly absorbed. That alone should have been a red flag to its creators. The RTC may be a more business-minded bureaucracy than most—many of its staffers are fresh from the private sector—but it's acquired a reputation as a black hole.

Congress bears a large part of the responsibility for this. Its actions have created a cumbersome process for appraising and marketing RTC real estate, typified by a requirement that about 18,000 of the properties, with an estimated value value of $550 million, be sold to buyers who have trouble affording housing in the real market. This wouldn't be so bad, given that the units often aren't gems, but the RTC also can't sell below a floor price. Congress, however, has harangued and harassed the thrift-bailout crew at dozens of hearings and, on occasion, intimidated them. Some members seem intent that no buyer of S&L assets should make a profit from the deal.

The real-estate trade is not for the faint-hearted, and General Accounting Office standards are not the ones prevailing in a tough liquidation. Some major players acquainted with this rough-and-tumble world, who might have contributed to a rapid "resolution" of the dead-weight thrifts, got an early whiff of the RTC's congressionally imposed punctiliousness and walked away from the process. They are not easily replaced.

So the real estate sits, running up carrying costs, losing value. (In retrospect, for all the recriminations they spawned in Congress, the Southwest Plan and other such deals that Danny Wall cooked up before leaving as top thrift regulator may have better achieved the goal of asset resolution than the careful plodder of an agency that succeeded him.)

Economist Edward Kane of Ohio State University offers a better feel for the task at hand when he likens it to running a junkyard. The object should be to get as much inventory as possible on the lot, bring in all the customers you can, and sell the pieces or parts at bid or, if time is eating away your prospective proceeds, for whatever beats scrap. Some buyers will cherry pick but so many transactions will occur that it won't matter if somebody gets a steal.

Mr. Kane believes it important for the feds to corral "zombie" institutions, since their federal deposit guarantees and zero net worth make them effectively nationalized anyway. But he says the RTC is a cash-flow swamp without the pressure to sell that gets business done in the real world.

Now that we have an RTC, can it be made to work? Senators of all stripes—from Texas's Phil Gramm to Connecticut's Chris Dodd—are screaming at the RTC to start selling off seized property, lest falling prices drag down their regional economies further. It'll never happen, though, unless Congress ceases the scapegoating and demagoging it calls "oversight." Congress has to choose: Either let the RTC shove this junk out the door, or get used to the idea of nationalized real estate.

[From the Wall Street Journal, Feb. 13, 1991]

TREASURY BANK PLAN: STRANGLE THE WEAK

(By Peter J. Wallison)

In its otherwise excellent proposal last week to reform the American banking system, the Treasury Department chose to control risky activities of bank managers by increasing the incentives of depositors to discipline their bankers. By curtailing the protection extended to depositors under the so-called "too big to fail" policy, and aggressively reducing the number of insured accounts available to businesses and individuals. Treasury is betting that depositors will react either by demanding higher interest rates from weak banks, thus reducing the banks' profitability until they alter their behavior, or by moving their funds from weaker to stronger banks.

Unfortunately, there is good reason to doubt the soundness of Treasury's proposed policy. Depositors, fearful of losing their funds, may withdraw them rapidly from riskier banks, causing a "run." Those banks would then need to liquidate assets quickly, and generally at a loss, to meet the cash demands of their customers. Strong as well as weak banks can be driven into insolvency by a sudden loss of confidence by depositors. The ever-present danger of runs creates instability in the financial system, and may even limit the willingness of banks to make loans that cannot be quickly liquidated.

It is by no means clear that uninsured depositors will act coolly and rationally to select well-managed and sound banks. In the financial world of the 1990s. It seems more likely that freightened and risk-averse depositors will move their funds from bank to bank—spreading unnecessary losses randomly throughout the system—or that depositors will simply move their funds out of the system entirely.

ECONOMIC ROLE

A serious argument can be made that efficient and rational depositor discipline of bank managements is impossible. By their nature. Banks invest in assets that cannot be easily valued. Indeed, evaluating assets could be seen to be the primary economic role of banks: Because lenders have no way to evaluate the creditworthiness of certain borrowers, particularly individuals and privately held businesses, they lend their funds to a bank, which then assesses the creditworthiness of these potential users of credit.

If this view is correct, a bank's assets are by definition difficult for outsiders to evaluate, and yet the bank's health depends vitally on the financial health of its borrowers. Treasury's approach, which requires depositors to discipline banks, ignores the fact that depositors would be acting in an informational vacuum. Bank regulators themselves—who presumably have the best information and expertise available—are often surprised by the speed with which banks move from apparent health to insolvency.

All this suggests that the most likely immediate consequences of Treasury's deposit insurance proposals, if they are ultimately adopted by Congress, will be more instability in the banking industry. Uninsured depositors, unsure of the soundness of the institutions in which their deposits are held, will move them quickly at the first sign of trouble. To counter this, banks may shorten the maturity of their portfolios—that is, make fewer commercial loans—and (if they can) increase their capital to serve as a buffer against losses and as a source of confidence to depositors.

These results will strengthen the industry, but at a cost. Assets of shorter maturity—investment securities, for example—are less profitable than assets of longer maturity, such as commercial loans. Shortening the overall maturity of a portfolio will reduce earnings, making it harder to increase capital. Similarly, selling assets to increase capital will tend both to lengthen the overall maturity of a portfolio and to increase its riskiness—because liquid assets are more easily sold than commercial loans.

Meanwhile, the nervousness of depositors will drive more and more of them out of the banking system altogether. Technology has created a new place to store cash, the money market mutual fund, from which most of the benefits of a bank account—liquidity, access by check and a market rate of return—can be obtained with no up-front cost.

If the depositor chooses a fund that invests solely in U.S. government securities or their equivalents, there is no substantial risk to the investor—and no maximum size for his account. Large numbers of business enterprises already use these funds for cash management purposes, and although banks have been imaginative in creating cash-management facilities that reproduce the advantages of these funds, their success has probably depended crucially on a belief by otherwise uninsured depositors that their funds were ultimately protected by the government's unspoken but frequently invoked "too big to fail" policy. Since the Treasury proposal seeks to narrow the scope of that policy, Treasury's success is likely to portend a substantial outflow of funds from the banking system.

This is not necessarily bad. The banking industry today suffers from substantial overcapacity—a condition frequently described by banking regulators as "too much money chasing too few good banking assets." This overcapacity must be wrung out of the system, and this cannot be done, simply by encouraging mergers and consolidations. Mergers will create fewer and arguably more efficient, profitable and diversified institutions, but they will not appreciably reduce the amount banks can lend at current capital ratios. Reducing capacity will require that banks actually be closed and their assets sold off to balance sheets outside the banking industry.

Treasury's proposal, by encouraging funds to leave the banking system and increasing the cost to banks (through risk premiums) of those that remain, will vastly accelerate this process. In other words, it appears that Treasury's conscious or unconscious policy for reducing overcapacity in the banking industry is to strangle the weak sisters. The Treasury report does not, however, provide for the inevitable outcome of this policy: an increased number of costly bank failures.

That will be expensive, because the Bank Insurance Fund—the fund supported by bank deposit insurance premiums—is now at historic lows. As weaker institutions fail in the future's more competitive environment, the cost of their failure will be borne by the survivors. Without taxpayer intervention, these survivors will themselves be weakened by the cost of bailing out the failures, leading to yet more failures. The downward spiral thus created will reduce the banking industry's overcapacity, but at considerable cost to the economy and perhaps the taxpayers.

If we are indeed to prepare for a sharp reduction in overcapacity, and if it is to be done through a culling of the weak, 'twere best it were done quickly. History and what little we know of human nature suggest that as weak bank managements struggle to survive they will reach for more risky investments to pay for their more costly funds, obscure from examiners the dangerous condition of the enterprise, appeal to their elected representatives as needy constituents and surrender only when all hope is gone. Similarly, regulators attuned to the necessities of congressional relations, and no more willing than other human beings to put other

people out of work, will forebear until the death rattle is clearly audible. The consequence will be significantly increased costs.

TRIAGE MECHANISM

What is absent from the Treasury report is any plan to address this outcome or any suggestion of a triage mechanism—a way of separating, quickly, the healthy institutions with prospects for survival from those that are unlikely to make the grade. For the S&L industry. Congress prescribed a minimum capitalization as the entry fee to the future, and gave the struggling members of the industry some time to raise this stake. The same thing might be tried for the banking industry, although the results in the thrift industry were unsatisfactory.

A better way might be private insurance, in which associations or syndicates of banks would guarantee some or all the deposits in other banks. The premium for this coverage varies according to risk. if all large banks were required to obtain this coverage, and no large depository institution were permitted to operate without it, the market would determine whether a bank was strong enough to survive in the competitive environment of the future. If the private market will not take the risk of guaranteeing a particular bank's survival, there is very little reason for the taxpayers to do so.

Treasury chose not to go this way in its report, but the question remains, if the U.S. banking system is to be culled of its weaker members through increased depositor discipline, how will the costs of this process to the banking industry—and the economy as a whole—be minimized?

(Mr. Wallison, White House and Treasury counsel during the Reagan administration, is an attorney in Washington.)

[From the New York Times, Feb. 24, 1991]

WHICH BOSKIN IS RIGHT?—THE ADVISER VERSUS THE PROFESSOR

Economist Boskin versus Economist Boskin. Which one is more persuasive in the debate about the impact of President Bush's proposal to cut the tax on long-term capital gains? The idea is to reduce from 28 percent to about 20 percent the tax on profits from the sale of stocks, bonds and other investments.

The first Boskin is Michael Boskin, chairman of the President's Council of Economic Advisers. He says the President's proposal would spur a huge increase in savings and investment, driving up economic output by about $12 billion a year for five years.

The second Boskin is Prof. Michael Boskin of Stanford University, who, before he went to Washington, published estimates, backed by intricate mathematics, that lower taxes have a limited impact on savers. To judge by that work, Mr. Bush's tax proposal couldn't possibly spur much economic growth.

Professor Boskin is right, Chairman Boskin is wrong, and to see why, follow a simple calculation that Alan Auerbach of the University of Pennsylvania provided Congress. If the economy were to churn out an extra $12 billion of output each year, as Chairman Boskin claims, it would need a lot more plant and equipment, at least $60 billion more each year. But extra investment requires extra saving. That raises the crucial question: Who will save more?

Not pension funds and other nonprofit organizations, because they aren't affected by a tax cut. Not foreign investors; neither are they, mostly. That leaves only domestic taxpayers, who now save about $220 billion. For them to come up with an extra $60 billion would require a 30 percent increase in their saving behavior.

Preposterous, according to the research of Professor Boskin; that large a saving response is outside professionally respected estimates, even his own. No problem, says Chairman Boskin.

Choosing which Boskin to believe is now up to the Federal Reserve chairman, Alan Greenspan. The President recently made him head of a commission to resolve technical discrepancies between White House and Congressional studies of a capital gains tax cut. Yet Mr. Greenspan will be able to resolve very little, if anything.

For starters, the technical discrepancy foremost in Mr. Bush's mind concerns estimates of the impact of the tax cut on the deficit. The White house estimates the tax cut will raise tax revenues by about $10 billion over five years; the Congressional Joint Tax Committee estimates it will lose that much.

The difference—about $20 billion over five years—is small, bordering on the trivial, in an economy that will generate approximately $5 trillion in tax revenues over the period. That discrepancy warrants no further study. And other discrepancies have already been scrutinized by scores of first-rate economists; one more study would resolve nothing.

By dragooning Mr. Greenspan, Mr. Bush has transformed a useless commission into a dangerous commission. Mr. Greenspan helps control the most powerful economic lever in the world, the U.S. money supply. It's imperative that he be, and appear to be, above politics. Yet by heading a commission meant to do Mr. Bush's bidding, Mr. Greenspan becomes a pawn of White House politics.

Apart from the technicalities and appearances, the President has permitted this capital gains issue to choke budget negotiations for two years, culminating in last year's crazy quilt of amendments to the tax code.

All this political havoc arises over an idea that, even if Chairman Boskin's estimates are right, would increase economic output by maybe $12 billion—in a $6 trillion economy. The upshot is that if Chairman Boskin's hypothetical calculations are 100 percent right, they are only 0.02 percent right in the real world.—MICHAEL M. WEINSTEIN.

[From the Washington Post, Feb. 17, 1991]

UNFINISHED RESORT SITS IN LEGAL LIMBO

(By Kirstin Downey)

HUDSON, FL.—The three towers rise along the Gulf of Mexico, multitiered and modernistic. From a distance, they are a shimmering white against the blue waters of the gulf and the soft clouds that dot the Florida sky, recalling those sunny days in 1983 when the Gulf Island Resort & Racket Club was going to be a part-time playground for tennis pro Eugene Mayer and movie star Burt Reynolds.

Up close, however, the buildings now are speckled with bird droppings, littered with piles of abandoned construction materials and streaked with the stains that may signal structural water damage. Weeds grow up through the cracked concrete of what were once tennis courts. Many of those involved in financing the project are in jail.

Built by a novice developer and jointly financed by seven out-of-state savings and loan associations, six of which have been seized by federal regulators, Gulf Island has dangled in legal limbo for more than five years. Since 1986, several dozen attorneys, representing the S&Ls, the developer, construction suppliers and the federal government, have fought over who owns it.

The property's tangled history is not unique.

According to L. William Seidman, who heads one of the two agencies charged with cleaning up the banking and S&L debris, thousands of properties around the country are similarly deteriorating while lawsuits drag through the nation's overloaded court systems.

The two government agencies—the Resolution Trust Corp. and the Federal Deposit Insurance Corp.—are facing about 150,000 such lawsuits, requiring them to hire about 1,000 new lawyers, Seidman said. As long as the legal wrangles persist, regulators are generally unable to sell the properties, postponing hopes of recovering some of the taxpayers' losses in the S&L cleanup.

The problem is particularly acute in states such as Florida that require a "judicial foreclosure" process, lawsuits complete with motions and counter-motions, before a property can legally change hands. And in Florida, where overworked federal judges are weighted down with drug and murder trials, such seemingly trival matters as determining who owns a property can be deferred for years.

A few real estate experts have suggested that the federal government authorize a "quick-take" system that could override state laws and allow the properties to pass more quickly into the hands of the RTC and FDIC. But any such proposal would likely become mired in state's-rights controversy, according to Seidman and others.

LITTLE LEFT OF VALUE

In the meantime, the losses are mounting.

For Gulf Island and the other legally encumbered properties, the delay can prove fatal as buildings are left to deteriorate through vandalism and exposure to the weather. The result can be an even greater impact on the taxpayers because the government, when it finally inherits a property legally, has little of value to sell to replace funds spent reimbursing depositors in failed thrifts.

Gulf Island itself has decayed so badly during its six years of legal limbo that Ted Williams, the local property assessor, said he believes the only probable use for two of the three high-rise buildings is to bulldoze them and push the debris into the water, creating a new fishing reef off the coast.

There is little doubt that the project eventually will be in government hands. The FDIC already is arranging for building management, since a few dozen of the units in the third high-rise are rented to middle-income families.

But Williams estimates losses of at least $42 million to the federal government from this project alone, based on the various loans issued on the properties by the savings institutions and the unpaid interest on those loans.

"That project never should have been there," Williams said. "It's all due to greed. People got money from banks to build projects that never should have been built. Unfortunately, we've got properties like this all over the country."

To those who know its story the final episode of the Gulf Island saga is not the only thing that makes it symbolic of the S&L debacle that is expected to cost American taxpayers hundreds of billions of dollars. Ill-conceived and poorly located, the property now serves mainly as a conspicuous and easily visible signpost for airline pilots flying to Tampa International Airport, which lies about 40 miles to the southeast."

When Gulf Island's legal status is finally settled, it is likely it will be added to the inventory of the FDIC, which manages properties from S&Ls that went out of business before the passage of the Financial Institutions Reform, Recovery and Enforcement Act in August 1989. It now has some 8,834 properties with a book value of $3.8 billion it is trying to sell. Some government officials say, however, that it may land instead amid the 41,000 properties in the inventory of the Resolution Trust Corp., which handles S&Ls that failed after August 1989.

The apparent confusion over which agency eventually will get the property mirrors its equally confusing present status. For example, the local representatives of the RTC and FDIC, whose offices are respectively in Tampa and Orlando and who are charged with overseeing property sales in the area, don't even know that Gulf Island is, or soon will be, a government property.

Contacted for information on the property, officials in both offices said they had never heard of it.

"Are you sure we own it?" asked the Orlando FDIC office's Joe Ferlo.

'OUT OF PLACE'

Technically, because of the legal delays, taxpayers do not yet hold title to Gulf Island. The property is expected to pass into the government's hands this spring, after the obligatory auction on the courthouse steps occurs, because it is unlikely prospective purchasers would be willing to shoulder the burden of the cost of the original loan, unpaid interest and default penalties. It will then become official U.S. property and the government will confront the harsh realities not only of the ravages of time and weather but of a project that apparently was ill-conceived from the outset.

"The thing is incredibly out of place," said Tampa real estate attorney David G. Mulock. "It looks like somebody put it in the wrong place by mistake, like maybe they held the map upside down or reversed the blueprints."

It is hard to understand why so many different loan officers were able to justify investing about $28 million at such a site. Plopped in an aging, lower-middle-class neighborhood, about a half mile down a two-lane road from a major thoroughfare, Gulf Island would have required a magical feat to prosper even in boom times, according to local real estate experts. Now, however, with the market in the doldrums, the same people are at a loss as to what can be done with the project at all.

The refuse left behind at Gulf Island tells the story of where some of the money went.

A bucket of sealant sits in the middle of what was meant to be a luxury penthouse apartment, the brush still standing upright in the long-congealed muck. The kitchen appliances are beginning to rust.

At another building, thick and overgrown brush lead into a grant entry hall that houses never-used shower stalls once intended for a luxurious health spa. Decomposing construction materials lie in heaps nearby.

Upstairs, a furnished apartment awaits residents who never arrived: Dust-covered motel-quality furniture still bears the original sales tags. The paint on the walls has bubbled from humidity and mold. The lamp shades are enshrouded in plastic.

Another room is filled with piles of new, plastic-covered mattresses.

Unusable tennis courts hint at a long-forgotten plan to establish Gulf Island as a sports resort. Local residents recall how tennis celebrities Eugene Mayer and Carling Basset were supposed to give lessons there. Others recall that actor Burt Reynolds, a close friend of Bassett's family, at one point was reported to have bought four units there.

They also recall that consulting contracts for such things as interior design and resort management were liberally dispensed from the proceeds of the construction loans.

Few today are aware of the property's existence except the local residents who live in its shadow in Hudson, home of an elderly, blue-collar population of about 6,000 people. For them, the nearly empty buildings looming on the horizon are a constant reminder that things don't always work out as planned.

"It's been a real damper on the Pasco County community," local real estate consultant King Helie said. "It took a lot to get it approved. It was supposed to be a big boost in the arm for Hudson. But it hasn't been at all."

Just as the project has fallen on hard times, so have many of those involved in Gulf Island's creation.

NOVICE DEVELOPER

The project was developed by Joseph Senkovich Jr., then of New Smyrna Beach, which is on the oppsite side of the state from Hudson. The veteran of one previous development project, Senkovich started Gulf Island when he was 29, worked on it while he was 30 and lost it to his lenders when he was 31.

Senkovich has since left the development business and now works as a sports agent. Contacted by telephone, Senkovich said he could not comment on the Gulf Island project because it is his father's responsibility. His father, he said, was unavailable for comment because he was visiting Europe.

But people in Hudson recall that the younger Senkovich was the man in charge.

The seven lending institutions involved in the Gulf Island project were equally inexperienced in building oceanfront tennis resorts. Six were based in Louisiana, and all of those have collapsed, included four closely linked institutions that were seized by federal regulators on the same day. The failures of the six were blamed on high interest rates paid to attract investors from around the country, with the proceeds invested in what regulators called "highly speculative" development projects.

Many of their top officers have subsequently gone to jail for illegal activities pursued during their brief tenures in the thrift industry. They include:

Guy W. Olano Jr., chairman of Alliance Federal Savings and Loan, a divorce attorney who entered the savings and loan business when he started Alliance in 1981. He has been convicted of bank fraud, bankruptcy fraud, income tax fraud and conspiring to make unsound loans in return for kickbacks. In addition, at one of his trials, a Drug Enforcement Administration representaive testified that Olano had been linked to cocaine trafficking, and a Federal Bureau of Investigation special agent testified Olano was connected to organized crime and money laundering for South American drug families.

Leonard J. Munna III, president of New Orleans Federal Savings & Loan Association, was sued by federal regulators for allegedly taking kickbacks from borrowers, and was subsequently convicted of making false loan reports and of receiving unlawful receipts from loans he helped approve.

Ralph Hosch, president of Audubon Federal Savings & Loan, was convicted of accepting kickbacks in that job. But he has since been linked to the problems at another one of the six institutions involved in Gulf Island: An indictment last year charged that Hosch acted as a loan broker while president of Audubon and helped a friend illegally obtain a $1.6 million loan from Crescent Federal Savings and Loan. He has pleaded not guilty.

At least five other officers at the six closely linked thrifts have since been convicted of illegal banking-related activities.

While at least eight of those involved in the Gulf Island project went to jail for unlawful activities, it is the taxpayers who will face the cost of Gulf Island's losses. And it is a far higher taxpayer burden than it once might have been.

In the early 1980s, state officials had contemplated buying the then-vacant plot for a park. But the $2.7 million price tag seemed too much to pay for parkland, according to local officials.

"This is a sad story in our history," said Hudson resident Howard Sutter, who lives near the Gulf Island site and has watched the saga unfold.

Sutter is still shaking his head over the fact that the federal government will foot a bill that could reach as high as $42 million for a refuse-strewn, unfinished development project that the state could have purchased for a fraction of the price.

COM-LAND GROUP, INC.,
Pensacola, FL, January 30, 1991.

Re: FDIC and RTC owned real properties.

U.S. SENATORS, INTERNATIONAL FINANCE AND MONETARY POLICY COMMITTEE MEMBERS,
Dirksen Senate Building,
Washington, DC.

DEAR SENATOR: Enclosed is an article on the Continental Bank of Illinois. The essence of the last several paragraphs is that the FDIC speculated on Continental's stock when it should have immediately redeployed that asset into cash. If a commercial bank insured and regulated by the FDIC had done the same thing, it would not have been tolerated. The loss to the taxpayers and depositors that support FDIC is enormous.

One part of our business for the past 5 years has involved liquidation of real estate assets acquired through foreclosure by commercial banks. In most cases, the banks which we represent insist on redeployment of these assets at optimum prices as quickly as possible.

The other part of our business involves acquisition of foreclosed properties from lenders and developers and immediate resale of them.

On numerous occasions, we have attempted to acquire from FDIC some of its real estate inventory. Our experience strongly suggests that FDIC is not interested in selling property. The problems are not the individual employees of FDIC, most of whom are bright and personable individuals. The problems are the system, its cumbersome rules, and its bureaucracy. The net result is that FDIC is also speculating on its real property assets with horrible results.

Some of the problems we have observed are:

1. Foreclosure proceedings that take twice as long or more than is necessary (when FDIC is the owner of a note and mortgage in default).

2. All decisions are made by committees. Asset managers and supervisors are afraid of possible criticism of any decision they might make, thus, no decisions are made, and very little progress results.

3. Rules provide price guidelines that are a percentage of current appraisal, yet apprais-

als are not updated on a timely basis, and asking prices are out of tune with market conditions. In addition, appraisers are often employed from areas far away from the subject property. Often the appraiser is totally unfamiliar with the market in which the property is situated. Often the appraiser uses unrealistic "comparable" data that, in fact, is not comparable. The only conclusion that can be inferred is that asset managers tend to employ the appraisers who are well-known to them rather than appraisers who would be more logical choices. The above is not sound business practice, poor results are obtained, and more taxpayers' money is wasted.

4. FDIC prefers to sell groups of properties in bulk (e.g., a condominium development with 20 units), yet prices quoted to bulk buyers are usually retail prices that might be appropriate for one unit sale to one user, but are not appropriate for a bulk sale to an entrepreneur who intends to resell the units individually.

5. Protracted holding costs chew up the capital of FDIC's assets. It is estimated that FDIC's cost of holding improved real property approximate 30% to 33% per annum including capital at 10%, maintenance, insurance, taxes, and FDIC administrative costs. Thus, the entire capital of an asset can disappear within less than three years, and often does.

6. Assets located in one part of the country are frequently managed by an asset manager in an FDIC office in another part of the country removed 2,000 miles from the asset. This makes no sense whatsoever.

7. Assets are contracted out to private managing companies with a contract not only to manage the asset but to also give the same company the exclusive right of sale of that asset. A healthy fee for managing provides every incentive to continue to manage, and is in direct conflict with the duties attendant to the timely liquidation of that asset. The results of this type of contracting are exactly what one would expect.

8. The complete lack of any semblance of an FDIC marketing program is clearly evident. The conclusion could be that FDIC is apparently in business to build its real property inventory, create the need for more staff managers, continue to expand its bureaucracy and waste more taxpayers' money.

The FIRREA Act created an unwieldy monstrosity that will do nothing but cost the taxpayers untold and unnecessary billions of dollars unless there are substantive and quick remedies.

Immediate reform is imperative. A czar with authority is necessary. Decentralization is necessary. Accountability is necessary. Stated objectives that will be achieved within mandated time frames are necessary. Immediate action to redeploy assets and deliver dollars to the treasury should be top priority.

The current situation with FDIC is truly a travesty and tragic abuse of the taxpayers. We purposely have not dealt with the RTC because of the horror stories which we have heard and read. It is reasonable to assume that our comments herein are equally applicable to RTC. We feel sure that you have already received numerous complaints about both agencies.

Everything considered, including the hemorrage referred to as the federal deficit as well as the burgeoning total federal debt, the RTC and FDIC problems are of crisis proportions demanding your immediate attention and action.

Respectfully,

CHARLES F. FADDIS.

[From Business Week, Aug. 13, 1991]

THE REMAKE OF THE REMAKE AT CONTINENTAL BANK

If this is mid-1990, it must be time for another Continental Bank Corp. facelift. In 1987, the bank sold local outlets, shuttered European offices, and axed its municipal-bond desk, all to support its transformation into a global merchant bank. In 1988, it abandoned retail lending, bolstered foreign-exchange trading, and applied, unsuccessfully, to form a stock-underwriting unit. In 1989, Continental formed an investment banking unit and put its First Options securities-clearing business on the block, where it remains today. No one can accuse CEO Thomas C. Theobald of being tied to tradition.

SWEEPING

Being tied to the federal government is another matter. Since its 1984 bailout by the Federal Deposit Insurance Corp., Continental has operated under the agency's watchful eye—to the detriment, say bank executives, of attempts to enter new businesses and retain wary customers. That extra-close regulatory relationship is about to end. On July 26, Continental announced plans to sell the FDIC's remaining 26% stake in the bank. This comes just as Theobald has finished his most sweeping makeover, which he insists is in keeping with his strategy of responding to marketplace demands. "This isn't exactly a fashion industry," Theobald says, "but things do change as to what the customer needs."

Continental's latest tack is one of strategy by subtraction. In March, after an early look at first-quarter numbers that eventually produced a drab $56.7 million profit, Theobald ordered a product-by-product review of the bank's business. The result was the axing of 900 jobs, an exit from the commodities execution and clearing business, and the shuttering of foreign-exchange trading desks in Tokyo and London. The bank took a $48 million hit but expects annual savings of $75 million.

The dreary financial results led the top brass to conclude they had no choice. "You either wait it out or choose to do something about it," says Hollis W. Rademacher, the bank's chief financial officer. "We chose to do something about it." Each of the jettisoned subsidiaries was falling well below Continental's goal of 30% gross profit margins and 15% return on equity.

Management insists the bank can thrive by picking its targets carefully: interest-rate risk management, debt distribution, corporate finance, and private banking. The mix is designed to keep intact Continental's core client list: about 2,000 large and medium-size companies, most based in the Midwest. "We're not downsizing in everything," insists Rademacher. "My God, we're not trying to go out of business here."

SWOONED

What Continental is trying to do is turn around some pretty bad numbers. Continental's ongoing operations lost $46 million in the second quarter, non-interest expenses rose 37%, to $221.7 million, and salaries rose 11%. It could have been worse: A $25.9 million recovery on a loan to a developing country saved the bank from doubling the quarter's $25 million loan-loss provision.

(That faltering performance might cause any investor to lose heart, since Continental's stock price has swooned from 26⅝ in early 1989 to around 13 today (chart, page 40). But it does nothing to counter the impression that the FDIC is one lousy market timer. The agency, which says it's likely to lose $2 billion this year, denies that the sale is timed to cover any cash shortfall. "Whatever action we take is predicated on getting as much as we can for the stock," insists a spokesman. The agency backed off from a sale last fall, when the stock went for about 20, and rejected a June bid from an investor group that included Theobald. The price then: 15.

Recently, the FDIC dangled its stake in front of First Chicago Chairman Barry Sullivan, who did not bite. Other Chicago investors, including the wealthy Crown and Pritzker families, are said to be considering offers. Theobald believes the stock will be sold to the public.

In nixing earlier bids, the FDIC apparently thought the price would climb. No one at the agency will confirm it, but evidently that thinking has changed. Continental may be happy to end its uneasy partnership with the feds. But for the FDIC, it's a case of getting out while the getting's not very good.

(By David Greising in Chicago, with Leah J. Nathans in New York)

FT PETERSBURG, FL,
January 4, 1991.

Senator ROBERT GRAHAM,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: I have a suggestion that might help the Resolution Trust Corporation (RTC) reduce their inventory of foreclosures, reduce their continuing holding costs, and return the properties to the tax rolls of the jurisdiction in which they reside. I am suggesting that the RTC use the recreational property and dispose of business property through a series of "National Lotteries" as described below.

MANAGEMENT SUMMARY

Objectives:

1. Move the properties from federal to individual ownership and responsibly.

2. Get the properties back on the municipal tax rolls.

3. Provide all residents of the U.S. an equal opportunity to "get a deal" on the property rather than just a few people who are in the know.

4. Provide nonprofit community help agencies with a method of acquiring property for use in support of their feed and house the homeless projects. They would not receive preferential treatment; but they could enter the drawing.

5. Keeping these non producing assets from bankrupting the treasury.

6. Return revenues in excess of project related costs to FSLIC.

Process:

The lottery would be conducted via a nation-wide 1-900 telephone number the cost of the ticket and a small fee for the call would be charged to the caller's telephone number.

The call would be answered by a computerized Automated Attendant System that would record: the caller's name, address, and telephone number. A computer assigned lottery number would be provided to the caller and entered into the caller's record.

A centralized computer will generate a list of winning numbers. This list of numbers would be used to electronically locate the original call, play the call for a live operator who creates a transcribed record of: the name, address, telephone number and lottery number of each of the winners. This transcribed record will be used to create a letter notifying the winners of their good fortune.

Since the RTC is holding both recreational and business property I feel they should be

addressed separately in two different national lotteries as outlined below.

I. RESORT AND RECREATIONAL LOTTERY

The RTC could create a wholly owned subsidiary—RTC Recreation Properties Inc. This subsidiary would be used to:

1. Assume ownership of all recreational property held by RTC.

2. Manage the recreational and resort properties.

3. Conduct a national lottery, on a weekly basis, to provide one week all expenses paid vacation, for up to four people, at one of the resorts. The ticket cost would be $1.00 per ticket.

4. The vacation would be scheduled for 90 days after the drawing to permit the winner to make the necessary arrangements. The awarded vacation would be tax free to the recipient. If the vacation is sold the seller will have income tax liability equal to the value of the week provided.

II. BUSINESS PROPERTY LOTTERY

The business properties, like the recreational properties, are a drain to the U.S. taxpayers. We have already purchased the properties from defunct savings and loans and are now saddled with the on-going costs of securing and insuring the property. Vacant property is a magnet for vandalism and deterioration and blight. These properties provide no revenues to the municipalities in which they are located; but they add to the political subdivision's police, fire, and building related costs.

The tickets for this lottery would cost $5.00-$10.00 plus a service fee. The drawing will be conducted weekly. The lottery would be regionalized—in other words the ticket buyers would buy their ticket for one of six or eight regions of the U.S. Governmental entities, clubs, and nonprofit organizations would be permitted to enter the lottery for their region.

The winner will receive a clear title to the property and all lines, and mortgages on the property will be forgiven. The winners will have thirty days to close and take possession of the property. Taxes will begin to accrue on date of closing. Property not closed within the thirty day limit will be returned to the sales pool.

I must admit that I have an ulterior motive in making this suggestion. I have recently been laid off by the City of Tampa Florida and I need a job. I have thirty-five (35) years in communications and computers with considerable experience in the use of Automated Attendant and the Pay for Call scenario described. If my concept has merit and the RTC decides to explore its possibilities I would like to serve as a member of the evaluation and implementation team.

Sincerely,

DONALD H. MACLEOD, JR.

Mr. GRAHAM. Mr. President, in conclusion, as I indicated, the goal of this amendment is to achieve two objectives. One is to provide to the Resolution Trust Corporation the amount of funds necessary to continue the process of closing institutions whose continued operation would be a threat to the safety and soundness of the financial system. Therefore, my amendment authorizes and appropriates the $30 billion which has been requested for loss funds.

But going beyond that objective, my amendment also deals with a second major issue, and that is the current policy of laggard, slow, passive disposition of assets by the Resolution Trust Corporation, a policy that I have indicated in my previous remarks has caused the RTC now to hold, not the $40 billion in assets of receivership that it did in July, but rather $58 billion in those assets.

Mr. President, I believe that the amendment I have offered is a prudent one. It does not cause a major restructuring of the Resolution Trust Corporation. Rather, it inserts a clear congressional intent and motivation for the RTC to proceed to expeditious disposition of assets. I believe that is prudent.

Mr. President, however, I think that our work will not be done with the adoption of this amendment; that we need to continue to look for fuller surgery at an appropriate earlier date, and that fuller surgery should include the concepts of reorganization. We have created an administrative labyrinth that has become itself an inhibition to the effective operation of the Resolution Trust Corporation.

Second, Mr. President, I think we should look at the question of whether the barrier between funds for dead losses, the loss fund, and the use of operating working capital should be as stringent as it is now purported to be.

It is very difficult to explain to the American people why we are appropriating $30 billion in fresh capital to an institution that has currently on its books $144 billion of assets. I believe that it is an issue which needs to be looked at at the earliest appropriate moment. I am certain that the chairman of the Banking Committee will provide us that forum. But for today what we can do is send a clear message that, yes, we want to continue the process of closing down those institutions which constitute a risk, but we also, Mr. RTC, want you to understand it is our goal that you move forward with a more aggressive policy of disposition of assets because neither our economy nor the American taxpayers can continue to pay the heavy cost that is incident to the current passivity and lack of an assertive effort to move assets from the public into the private sector.

I thank the Chair.

The PRESIDING OFFICER. Who yields time? Hearing no response, the time will be charged equally between the two managers of the bill.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, how much time does the Senator wish?

Mr. DOMENICI. I would like 10 minutes, if the chairman will yield 10 minutes.

Mr. RIEGLE. I yield the Senator from New Mexico 10 minutes.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 10 minutes.

Mr. DOMENICI. Mr. President, I have an opportunity this year to serve on the Banking Committee. I am a new member because I was privileged to choose an extra committee. I chose to join the committe because it is a very dynamic year in that maybe we will take a look at the banking system of our country in an in-depth manner and see if it is in need of reform.

I am not going to discuss the issue today of the Resolution Trust Corporation needing funding but, rather, to tell the Senate why I think, based upon the summit agreement of last year, the laws that were passed to see to it that the depositors in this country who relied upon their Federal Government's commitment to insure them for up to $100,000 should be accomplished. The taxpayers of this country pay as little as possible to see to it that we accomplish that and accomplish it quickly.

Let me talk a minute about how I see this from the standpoint not of the pending amendment. I do not want to necessarily argue with the Senator from Florida, who is saying let us go with half funding. At least he has enough courage to say let us put up half. But I honestly believe that anything less than $30 billion, which is what the bill before us asks for, is bordering on fiscal irresponsibility. At least the Senator is suggesting we put something in so we can continue down the path that we started. But there are many who are taking the floor to argue about why do we even do it this way. Why not invent some new approach to this.

Mr. GRAHAM. Will the Senator yield?

Mr. DOMENICI. Let me finish a couple of thoughts and I will be glad to yield.

There is a notion that maybe is overused which refers back to the Roman Empire and they talk about Rome is burning and Nero fiddles. But now we can say money is burning and Congress fiddles.

Frankly, there has been so much talk about courage of late, about living up to our responsibilities, the American people seem to be excited about the fact that we are about to develop a can-do attitude, get on with what you have to do, do it. And some are talking as if there is a way out from committing $30 billion to cleanup the S&L mess and hold the depositors of this country harmless.

Let me tell you, I really do not think there is. I think we have already made this commitment. This game is already over. What we are really doing now is totaling up the score. The game is over and we are adding up to see who made touchdowns and who did not, because it is finished. We already passed the law. It took months and months to get

passed, after years of delay, and it said let us do this. Let us get the S&L's in a position where we take the most expeditious path to clean them up, hold the depositors harmless and get on with the S&L's that are solvent and can conduct the business for our people.

Who says they need the money? The chairman of the Banking Committee? The ranking member? Of course not. The Congressional Budget Office says we need the money. If we do not believe those who run the RTC, if we do not believe the administration—I chose to—the Congressional Budget Office, a neutral arm of Congress, took a look and what did they say? Do they want to throw our money away? Are they over there in an office helping Congress and they want us to put money in so we can say to Mr. Seidman, "We are doing what you want," or Mr. Brady, the Secretary of the Treasury? I do not think so. I think they are saying enough is enough. We delayed the S&L's bailout for years, and now you want to delay it some more.

Mr. President, just before Thanksgiving we delayed it. The public understood it then. In fact, the question was asked why are you not going to do what you ought to do, because you are going to cost the taxpayers more money? That is the same issue because we are back at it. Do you know how much it is going to cost, I ask my friends? Eight million dollars a day every day we do not put up this money and get on with the bailout and holding our depositors harmless because we committed to them that we would. I do not think there is any question about that.

Nonetheless, we can have perhaps a disagreement and some can say they are going to vote for it. That is wonderful. If they do not want to vote for it, let us get on with it. Let those who want to vote for it, vote for it, and complete our work. That is how I see it.

I could not be more emphatic about it.

There has been some talk about what is the budget impact of this $30 billion, and some have said there is gimmickry again. Let me see if I can quickly put it into perspective. When we went to the economic summit last year and came back to the Congress, do you remember everyone said, my gosh, the deficit went up after the summit was over. Yes, it did. Because this $30 billion is on budget and in the deficit now, this one—on budget in the deficit. We took Social Security off budget and added some more to the deficit. The recession added some more. So we have honesty in budgeting. It is on budget. It is expected by the numbers in the compact and agreement between the Congress and the President. This is expected to happen.

As it is spent, it adds to the deficit. But actually it only happens one time. And as the years go on, the deficit will come down because we will have bailed out and finished our commitment to our depositors, hopefully. So I think it is not fair for some to come to the floor and still raise the issue: where is this $30 billion in the deficit? Is it off deficit?

No, it is on budget and in the deficit.

Now, we did another thing. I say that because I worry about those who want to add amendments here on the floor that will cost money. I would like to explain what that is going to do one more time. Whether we understand yet or not, we adopted a whole new policy, Mr. President, called pay as you go. We decided that this budget bailout of the S&L's is an entitlement or mandatory program.

Why is that important? Because if you add any cost to a mandatory program, unless you pay for it with a new tax, at the end of the year the new entitlement cost believe it or not is taken out of Medicare and other entitlements across the board.

Let me repeat. If you want to add something to this amendment here on the floor that costs more money, that is not in the ordinary accepted law that is on the books that we all voted on once, if you add anything else and do not pay for it, then not the Congressional Budget Office, but the Office of Management and Budget, come the end of the fiscal year, takes a look and they decide we are going to cut all the entitlement programs including Medicare to pick up the money that was spent that we did not raise taxes for or cut some program.

We did that on purpose because we decided that it was time that additional mandatory programs or entitlements be paid for, and if not there would be a sequester. You understand this is a new kind of minisequester on the entitlements. So we would pay for any add-ons by cutting entitlement programs including Medicare and the like.

I am not suggesting that the pending amendment for the $15 billion is an add-on. It does not quite do the job. It is less than the $30 billion, and we will eventually put $30 billion in. I submit we ought to put it in now because that is what we are expected to do, and that is what we ought to do. I repeat, further delay in putting the money in which we have already passed a law that clearly says this is what we are going to do—We have committed to it and any delay costs us money.

Has my time expired?

The PRESIDING OFFICER. Yes.

Mr. DOMENICI. I did not intend to avoid answering a question or yielding for a question to my friend from Florida. But I will now, if he cares to ask me a question.

Mr. RIEGLE. I yield 2 additional minutes.

Mr. GRAHAM. To the Senator from New Mexico, does the Senator realize my amendment appropriates $30 billion as he indicates as the figure necessary to close the institution October 1st?

Mr. DOMENICI. Yes. I understood. Maybe I was wrong. I understood the amendment appropriated $15 billion in the manner suggested by the bill that is pending, and $15 billion in a conditional manner.

Mr. GRAHAM. That is correct. The conditional manner relates to cost. The Senator is aware of the fact that RTC is currently holding $16.6 billion of real estate assets out of a total holding of approximately $144 billion of all assets.

Mr. DOMENICI. I understand that.

Mr. GRAHAM. Based on the experience of the RTC to date there has been a depreciation in book value of real estate assets of something in excess of 1 percent per month of holding period, with another unknown amount of cost for maintenance, repairs, and the other incidents that accompany the ownership of real estate property. If you assume that same depreciation rate of 1 percent per month is now running against the $16.6 billion of assets currently held by RTC, that would indicate that every month there is a depreciation in value of $166 million of RTC's real estate portfolio. That calculates to me at $5.5 million every day to hold those assets.

Mr. DOMENICI. Does the Senator have a question?

Mr. GRAHAM. The question is concerned about the $8 million——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I may have 2 additional minutes.

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

Mr. GRAHAM. If we are concerned about the $8 million that it theoretically might be costing us per day for not closing down institutions that constitute an endangerment to the system, why are not we also concerned about the $5.5 million a day that we are losing in the depreciation of real estate values by the failure of RTC to aggressively dispose of those assets?

Mr. DOMENICI. I thank the Senator for his question. Let me suggest that the RTC as I understand it, has to perform two tasks at the same time. It must close down insolvent thrifts and pay off insured depositors. It must sell assets of those thrifts. Delay in either of those jobs wastes the taxpayer's funds.

So I do not think it makes any sense to prevent the RTC from closing down insolvent thrifts just because it is not disposing of assets fast enough. This amendment, since I have been asked, may also be wasteful by encouraging

the RTC to dump assets in order to proceed with case resolution.

I do not think we ought to do that. I think the $30 billion is needed. They can still sell assets in due course as required for all of those thrifts and proceed with the resolution as currently prescribed and contemplated.

I do not favor the amendment, but most of all I think before the day is out we should pass a bill funding the RTC to the maximum extent possible so we do not waste money and so we do what we have already committed to and say yes to what we have already committed to do.

I thank the chairman for yielding time.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, I speak on my own time. I ask unanimous consent that the time on the pending amendment be reduced so that there will now be 30 minutes equally divided in the usual form with all other provisions in the previous consent agreement remaining in effect.

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

Mr. RIEGLE. Let me now comment directly on the Graham amendment, and indicate why I cannot support that amendment at this time, And I will at the appropriate time move to table the amendment.

Let me say in behalf of the Graham amendment, it is targeted to help solve the critical problem in the RTC operation. I very much share his concern, as he knows, that asset sales by the RTC have been too slow. We have had the RTC officials in. We have questioned them at length, pressured them at length, as the Senator from Florida knows because he serves importantly on the Banking Committee and has a part in that.

Total assets of thrifts placed in RTC's hands have amounted to more than $270 billion at book value. So far the RTC has disposed of less than half that total, leaving as has been said nearly $150 billion of assets that remain in RTC's control.

The Graham amendment would seek to speed up the process by trying the $15 billion of this bill's $30 billion appropriation to the receipts from asset sales. While I agree with the concept of trying to look to find ways to speed up the disposition of assets, I am not sure that the mechanism that is suggested in this amendment is the right way to do it, or that it will work in a way that ends up saving us money.

The RTC needs to perform two tasks at the same time. It has to close down and sell insolvent thrifts, and it must sell the leftover assets of these thrifts. A delay in either job ends up wasting taxpayer's funds.

When the RTC continues to allow insolvent thrifts to keep operating in conservatorship, it is in effect borrowing money from the depositors at interest rates that are artificially high and well in excess of rates at which the Treasury could otherwise borrow money and pay off those depositors and undertake the liquidation of that institution.

The RTC also pays to appropriate all of those thrifts' branches. These costs are the principal sources of the estimates that we have been given; that failure to move this legislation now is costing somewhere between $7 and $9 million a day. It is also true as the Senator from Florida points out that the delay in selling assets can also waste money. That is a matter of great concern to me and to others here. Asset values have a strong tendency to deteriorate the longer they are kept in Government hands. So we want them to move these assets out as quickly as they properly and appropriately can.

If we can figure out a way to save money by speeding up that asset disposition process, I am all for that. I want to encourage that in every possible way. But if we mandate a process that does not actually accomplish that goal although that is the stated goal, we can end up making the problem that we now have worse, and we can end up making it more expensive. That also is a concern.

If the RTC ends up wasting money because it does not meet its sales targets, we will withhold needed funding and force it to waste even more money by slowing down the rate at which it closes or sells insolvent thrifts.

And that, in a sense, would be compounding our difficulties and not helping them. Ironically, one of the RTC's best means for disposing of assets is closing and selling thrifts. Typically, the RTC virtually immediately disposes of about one-third of the assets of an institution that it is taking, shutting down, and selling. The problem is that it cannot sell any right now, unless we provide this money.

And while the Senator from Florida makes a conditional 15 and 15, the first 15 will only take us out through the existing ones that are lined up, ready to sell now, and probably only take us out a matter of 2, 3, 4 months, at most, and then we will be right back in the situation where we have other institutions waiting to be put out to bid, sold, and closed, that we cannot move on.

So this amendment is based on the hope that we can save money by threatening an interruption of the funding, if the RTC does not perform in a way that this amendment calls for.

Maybe that can work in some bureaucracies. I am not convinced that it can work in the kind of unique circumstances that apply in this case. The RTC salaries generally do not depend on additional appropriations. Most are charged to conservatorships or receiverships. In fact, the longer we delay providing the necessary funds, the longer the whole process takes, and the longer these jobs, ironically, last at RTC.

I think the incentives may backfire in another way, as well. The amendment only gives the RTC credit for sales from assets from thrifts already closed or sold. Most asset sales come from thrifts still operating in conservatorship, which is where two-thirds of the RTC's assets now lie.

With this amendment, we might be stimulating sales of some assets at the expense of other potentially larger sales. So I think what we ought to do here is provide the full $30 billion. The GAO, as was said by the Senator from New Mexico, has recommended that that be done. That will facilitate an orderly disposition process.

We have also been told by GAO that some of the problems in the RTC have been materially improved; that they are operating in a more effective manner; and that the amount of money needed down through the remainder of this fiscal year, another 7 months, is the $30 billion. So I do not think we ought to tie it up; I do not think we ought to make it conditional. We ought to move ahead to expedite the resolution of this problem.

There is also the issue of the real estate market out there, and the degree to which you can push these assets out the door at fire sale prices, or distress prices, and you risk losing more than you save. I do not know that we can make that decision here in general terms. We certainly cannot make it property by property. But that is why I think people who are charged with that responsibility have to be the ones to decide when the appropriate time is, and what the appropriate price is to dispose of a given asset in a given situation. That is not to defend RTC's general operating history and record, because we have aimed a lot of criticism at them, and we have put as much pressure constructively as we know how to streamline their procedures. But, in the end, the decisions to avoid the dumping of assets and getting an insufficiently high value or realistic value is something which also needs to be avoided here.

So I share the concerns of the Senator from Florida. I think every Senator does. No one here is satisfied with the pace of asset disposition. It is an enormously complicated issue. We have not had hearings on this proposal, and I do not think we ought to act on it in the context of this bill, trying to move it through to handle these case resolutions, until there is a chance for that kind of far more complete examination.

I also say, finally, this: I am told that this exact same amendment was raised in the House Banking Committee and was rejected in the House Banking Committee. That does not mean we should not make our own

independent judgment here—and we will—but I think it shows there is opposition to it there, as well as the opposition expressed here. I think if it were to be included at this point, in light of that vote on the House side, I think that would further delay the passing of this bill, and I think drive up the element of cost.

So, having said that, at the appropriate time I will move to table the amendment. I hope that will be the decision of the Senate.

I reserve the remainder of my time.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Will the Senator yield 3 minutes?

Mr. RIEGLE. Yes.

Mr. GARN. The Senator from New Mexico and also the Senator from Michigan have adequately outlined the reasons we do not feel this amendment is appropriate at this time. The Senator from Florida certainly makes a good point about the speed of the asset disposition. There are a lot of excuses that RTC can give us for why they have not proceeded more quickly, but I think that we should not tie them down with this type of a mandatory procedure as proposed in this amendment. I think it will only cause additional costs to the taxpayers and not really precipitate the more rapid sale of the assets.

When we first passed FIRREA, or when we were in the discussion stage, the major input we were getting over and over again, and the pressure that we were getting from all segments of the economy was, please, do not dump all these assets. It will ruin all of the local real estate markets.

As a result, a lot of provisions in FIRREA ended up being too restrictive. There are some of those provisions that I felt, at the time, should not be included, which have been part of the problem of the RTC not disposing of the assets properly and rapidly.

So the Senator from Florida is correct. In one hearing last fall, I said to the RTC officials, look, do something, even if it is wrong. I am tired of the delay. Get on with it. Mistakes may be less costly than the delay that is going on. So I am sympathetic to the problem, but I am not sure how we help with this amendment. We put restrictions and demands on the RTC that they be careful about how they sell assets, and now we are saying that they have not done it rapidly enough. They are in a very difficult position.

While opposing this amendment, I hope that in hearings in the Banking Committee, these amendments will have been useful in sending some messages around the country, to the RTC, that we need to work together in finding a better method and a more rapid method of disposing of these assets, so that we minimize the cost. Either way you go, slow disposition of assets costs the taxpayer more money; not giving enough working capital, funds, to the RTC causes additional cost. You can add the two together and say that maybe it is $13 million to $15 million a day in additional cost to the taxpayers, because we are not providing the proper tools.

While opposing this amendment and asking my colleagues to vote to table it, I hope that some messages come out of the debate. Many of these amendments have worthwhile intent, and I hope that we are able, in the next 2 or 3 months, to come up with some legislation that we could agree on with the administration, RTC, and Treasury, that would expedite this process. Then it might not be necessary to come out here on the floor and debate working capital time and time again. I remind my colleagues, even if we pass this bill, we will be back here in September, and I hope then we have better answers to the problem.

The PRESIDING OFFICER. Who yields time?

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, if the opponents have concluded their remarks, I want to make a few statements in closing.

The PRESIDING OFFICER. Senator RIEGLE has approximately 4 minutes left.

Mr. RIEGLE. If the question was do I intend to speak again, or will I speak again, is it that the Senator wanted to?

Mr. GRAHAM. I am prepared to close.

Mr. RIEGLE. I have no intention now, unless the Senator from Florida fires a Scud missile this way, and that I have to send a Patriot up after it. Other than that, I do not intend to speak further.

Mr. GRAHAM. Mr. President, if I fire a missile, I hope it will be other than a Scud, such as a Tomahawk, with greater capability to impact on this problem. In fact, to use that metaphor, I think we have had some Scuds launched.

I have tremendous regard for my colleague, friend, and neighbor, the Senator from New Mexico, and he gave a very persuasive argument against an amendment that was not before us. The amendment that I have accepts the fact that between now and the end of this fiscal year, end of September, sadly to report, we must spend $30 billion in lost funds on savings and loan institutions that will be terminated during the balance of this fiscal year.

I regret to say that I have concurred with the position of the Senator from New Mexico that that amount is the amount called for, and my amendment would make it available.

As I have indicated, however, that is not our only problem. The other problem I am attempting to focus on is the fact we are building this enormous bureacuracy to oversee an even more enormous portfolio of assets.

To put this in perspective, we are currently holding about $144 billion of assets. If the $30 billion is approved and if it has the same consequences as those funds which have been appropriated in the past, we will add another $45 billion of working capital receivership assets to our portfolio, because the ratio between lost funds and working capital funds has been a ratio of approximately 3 to 4.5. So $30 billion of more lost funds produces $45 billion more in this mounting, enormous portfolio of assets. And RTC is saying they are reluctant to sell even $15 billion out of what will almost be a $200 billion portfolio over that period of time. I consider that to be a stunning admission of incompetence.

Mr. President, it has been suggested that my amendment is fostering a fire sale, that we are going to force people to go out and sell these assets at tremendous discounts.

Mr. President, I ask this question: Where did those values on the books come from? Did they fall down from the air? Did some deranged person put a dollar figure on the cluster of assets which move into the receivership column of RTC?

Quite to the contrary. It was RTC itself who put those values on those assets. And under the law we passed, as detailed in the General Accounting Office report, those asset values are supposed to be market values. That is, if they said this asset is worth $1 million, supposedly somebody ought to be willing to pay $1 million for it.

So we are not asking for fire sale prices. We are asking to sell at the price that RTC has determined to be the fair market value of these assets.

It has also been suggested, Mr. President, that we are threatening RTC; that this small amendment, an amendment that can be written on less than a full page, constitutes the Goliath against the David of RTC.

Mr. President, my point is there are some powerful disincentives for RTC to sell assets; that the reason we are in the situation we are today, with $144 billion of unsold assets moving towards $200 billion of unsold assets, is not by accident.

What are some of those disincentives? One of them is a bureaucracy has an incentive to continue its life. I understand at the beginning of World War II, Mr. President, when Winston Churchill decided it would be appropriate to send some troops out to overlook the coast of England to guard against possible naval assault across the English channel, that they ran into a group of people who had been out there since the Napoleonic War with the same assignment.

A bureaucracy, once in place, tends to stay in place. And our bureaucracy with the RTC has now reached 5,000 and is growing. So that is a powerful incentive.

Another powerful incentive is a bureaucracy with a tremendous amount of resources has a disincentive to put itself out of business.

Mr. President, I know you are an attorney, as are a number of Members of this body. The RTC, I understand, this next year will have legal bills of $1 billion. Can you imagine the power that comes from having $1 billion to hire lawyers? A powerful disincentive to putting oneself out of business.

Finally, there are going to be some heavy political costs. My sense is, and I believe all the evidence points, that the asset value placed on these items is substantially above what the real fair market value is and that gap is getting bigger every day as we allow these assets to depreciate.

So nobody wants to sell the assets in part because once you sell that asset you have to make a public admission that you are carrying it on the books at an inflated value. Then you have to come back to the taxpayers a second or third or fourth time to ask them to pay for that difference.

Remember, these assets are being borrowed upon 100 percent through the Federal financing bank. Every dollar that is on the books has a dollar of debt incurred to the Federal financing bank. If that dollar can only be realized at 65 cents, 35 cents are going to have to be paid by the taxpayers through the appropriation of this Chamber and the Chamber down the hall to fill the final gap.

There is a tremendous political disincentive not to sell these assets because to do so puts on the table the reality of just how much the taxpayers are going to eventually have to pay.

It is ironic, Mr. President, at a time when countries around the world, the Soviet Union, Czechoslovakia, Hungary, Poland, are trying to figure out how to destateize property—how to convert property from public ownership to private ownership, how to end a 75-year dark shadowed era after centralized control and ownership of property—while they are trying to do that, we have countenanced an organization that is rapidly stateizing much of the property of the United States of America.

I believe we need to send a powerful—and if you describe it as threatening, so be it—incentive to the RTC to move toward the goal of private ownership of property, a smaller, leaner Government, the closure of this gargantuan bureaucracy which is in the course of being created and enlarged.

So, Mr. President, in closing, the issue we have here is not whether we should provide the cash resources to expeditiously close institutions. My amendment accepts that premise. The question is: Is that enough?

If you can answer the question, "I am satisfied with the way RTC is conducting its business; I am satisfied that RTC, without any further change in its incentive structure, will reform itself," then vote against my amendment. It is unnecessary—or you may consider it to be adverse to the public interest.

If, on the other hand, you think there is a very deep public interest in selling these assets back into the private sector, a deep public interest in avoiding the creation of a model that will last beyond the life of our children and grandchildren, if you believe that can be accomplished by linking access to a portion of the funds for the closure of institutions to the sale of those assets, then, Mr. President, I urge your vote and support for my amendment and that of our colleagues.

The PRESIDING OFFICER (Mr. CONRAD). Is there further debate?

Mr. KERRY. Mr. President, I support the amendment of the Senator from Florida.

The Resolution Trust Corporation currently has over $140 billion of assets in its inventory. The real estate portion of the portfolio garners most of the publicity, but it is only 12 percent of the entire portfolio. In fact, mortgage-backed securities account for 8.5 percent of the total, cash and investment securities account for 11.9 percent, and total nonperforming loans are estimated at a whopping 45.4 percent. Getting rid of these various assets has proved to be a herculean task.

One of the fundamental problems in the bailout process has been the slow, inefficient, and often cumbersome asset disposition process.

Senator GRAHAM's amendment would provide for $15 billion in immediate funding to the RTC—this would allow the RTC to continue operations. The amendment would also provide an additional $15 billion on a dollar-for-dollar match for each dollar in cash dividends the RTC receives from sales of assets in its portfolio.

This amendment is yet another attempt to improve the asset disposition process. It is, in a way, the flip side of the amendment which Senator KERREY offered earlier. While not specifically authorizing a bureaucratic reorganization, that would clearly be the effect of this amendment. In order to continue the bailout process, the RTC would be forced to accelerate the disposition of assets—that can only be done if the process is rationalized and changes in the organizational structure are made.

Mr. RIEGLE. Mr. President, I yield back any remaining time that exists on this side.

Mr. GRAHAM. Mr. President, I yield back the remaining time on this side.

The PRESIDING OFFICER. All time has been yielded back.

The question occurs on the amendment offered by the Senator from Florida [Mr. GRAHAM].

The yeas and nays have not been ordered.

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

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

The yeas and nays were ordered.

Mr. RIEGLE. Mr. President, I move to table the amendment and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question then occurs on the motion to table amendment No. 14 offered by the Senator from Florida [Mr. GRAHAM]. The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from California [Mr. CRANSTON] is necessarily absent.

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

The result was announced—yeas 80, nays 19, as follows:

[Rollcall Vote No. 23 Leg.]

YEAS—80

Baucus	Gramm	Moynihan
Bentsen	Grassley	Murkowski
Biden	Harkin	Nickles
Bingaman	Hatch	Packwood
Bond	Hatfield	Pell
Boren	Heflin	Pressler
Breaux	Heinz	Pryor
Bumpers	Helms	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Chafee	Jeffords	Rockefeller
Coats	Johnston	Roth
Cochran	Kassebaum	Rudman
Cohen	Kasten	Sanford
Craig	Kennedy	Sarbanes
D'Amato	Kerrey	Sasser
Danforth	Kohl	Seymour
Dixon	Leahy	Simpson
Dodd	Levin	Smith
Dole	Lieberman	Specter
Domenici	Lott	Stevens
Durenberger	Lugar	Symms
Exon	Mack	Thurmond
Garn	McCain	Wallop
Glenn	McConnell	Warner
Gore	Metzenbaum	Wellstone
Gorton	Mitchell	

NAYS—19

Adams	Daschle	Mikulski
Akaka	DeConcini	Nunn
Bradley	Ford	Shelby
Brown	Fowler	Simon
Bryan	Graham	Wirth
Burdick	Kerry	
Conrad	Lautenberg	

NOT VOTING—1

Cranston

So, the motion to lay on the table amendment No. 14 was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 25

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of amendment numbered 25 offered by Mr. KERREY of Nebraska. A vote in relation to that amendment will occur at 2:50, with the time until then controlled and divided in the usual form. The yeas and nays have been ordered. We are now on amendment numbered 25. Who seeks recognition?

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. Who yields time? The Senator from Nebraska.

Mr. KERREY. Mr. President, I yield 5 minutes to the distinguished Senator from Arkansas.

Mr. PRYOR. Mr. President, much of what I hear about the RTC's performance is discouraging and I think it is time for a change. The changes we propose will help ensure that the RTC is efficiently managed and depoliticized, and these changes will give us all the confidence to move forward with the bailout.

Mr. President, the current dual board structure of the RTC is the equivalent of having a single body with two heads; neither is fully in control of the RTC, so neither takes full responsibility for running it well.

The confusion generated by this arrangement is evident in the complaints I hear regularly from my constituents in Arkansas. Mr. Nick McDaniel, a realtor from Little Rock, wrote to me about his experience with the RTC. The first offer Mr. McDaniel wrote for an RTC property was $3,500 over the appraised price, but the RTC let the offer expire without even looking at it. After waiting twice as long for an RTC response on his second offer, Mr. McDaniel called and found out the property had been placed in the affordable housing program and his second offer was invalid. When Mr. McDaniel finally received the documents on how to submit an offer under the affordable housing program, they were illegible. Mr. McDaniel subsequently terminated his contract with the RTC in disgust. He said other realtors he knows have had similar experiences with the RTC.

This single incident is representative of the tales of delay, indecision, and inefficiency I have heard from my constituents. The RTC's asset liquidation procedures seem more focused on file documentation, bureaucracy, and red tape, than on taking productive assets off the hands of taxpayers and getting them back into the economy.

This confused situation doesn't have to exist, and there is no reason it should. The present dual board structure resulted by default when the Treasurey Department and the FDIC could not agree on single board during drafting of the savings and loan bailout bill. We can change this structure, and we should.

Not only does this giant have two heads, but the heads are thinking about so many things other than the bailout. The RTC Board is, in fact, the same as the FDIC board which has its hands full right now trying to replenish the bank insurance fund and strengthen the commerical banking industry. The RTC Oversight Board, on the other hand, is made up of the Secretaries of Treasury and Housing, the chairman of the Federal Reserve Board, and two nongovernmental members. The three governmental members on this board are some of the busiest persons in Washington, with huge projects of their own to manage.

Mr. President, the RTC needs some full time attention by some experts who are focused just on the bailout. Under our amendment, the working majority of the new RTC Board of Governors would be composed of individuals whose sole job would be to oversee and mange the RTC. Moreover, these individuals would be experts from the private sector with experience in management, finance, banking, and other areas.

These private sector experts would not be politicians always worried about who's going to get the blame, or how to disguise the costs so that the deficit looks smaller. Congress could look to the private sector board members for reliable, first time estimates of the cost of the bailout. We could depend on the Chairman of the new Board, who would be appointed from among the private sector members, to come before Congress, give an accounting of the RTC's performance, and request funding before the RTC runs out of money.

Mr. President, these selling points get us to the heart of the issue that Senator KERREY has noted all along, and that is confidence. The debacle in the savings and loan industry has caused the public to question not only whether the government can manage our country with honesty, efficiency, and expertise, but whether the Government wants to. A board and a chairman with the experience, and integrity of, say a Paul Volcker, would not only run the RTC well but would also do much to restore some lustre to the Government's much tarnished financial regulation image.

Mr. President, the American taxpayers will be paying hundreds of billions of dollars to fund this bailout, and they are certainly within their rights to ask for efficiency, expertise, and accountability in the conduct of the bailout. The new RTC Board of Governors would give us these qualities. I say we should stop playing games with the bailout, act as responsible stewards of the taxpayers' money, and earn the confidence of the American people. I urge my colleagues to support this amendment.

Mr. President, I am very proud this afternoon to be able to stand on the Senate floor and say that I am one of the cosponsors of the Kerrey amendment. Anytime there is a public mission, a Federal service or a State service or a local Government service, that mission is only going to be accomplished if there is one central ingredient, and that is confidence. In my opinion, confidence, Mr. President, is lacking in the makeup of the RTC and the method in which it is attempting to dispose of the billions and billions of dollars in assets formerly owned by the S&L's in our country.

Mr. President, I compliment the Senator from Nebraska because I truly believe that his efforts—after a great deal of thoughtful study and consideration, looking at the very beginning of this fiasco to where we are today—in this amendment truly represent an idea and a belief that we can have common sense in the RTC's asset disposal: a full-time board, private sector experience, elimination of a great deal of duplicating of bureaucracy, the disposal of assets in a timely manner.

I certainly agree with the Senator from Nebraska, as he has so eloquently stated time and time again on the floor of the Senate, the longer we delay reform in this area, the more the American taxpayers are going to be called upon to pay.

I have three examples of what we are talking about today. These are all Arkansas examples.

One real estate broker informed me of the situation where the RTC let a potential $15 million cash offer on one of its properties slip through its fingers when it would not return the broker's phone calls. The particular agent had a client who was willing to make a special trip to Dallas, TX, to view the property in question. But upon calling and calling the RTC, the broker twice got secretaries who could not give him any information, and once he got an answering machine. But he has not one time even received a return telephone call from the Federal officials.

The second example is of a large, well established real estate firm in Little Rock, AR. This firm had to wait 4 months on the RTC, not to get the OK on the sale of a multimillion dollar property but just to get confirmation that it had been accepted into the contractor data base. Mr. President, this is inexcusable.

Third, the RTC and FDIC are essentially one entity, and this was found out when two physician groups in Arkansas recently had to wait over 5 months to get approval of leases for a little more space in a medical building that the FDIC had obtained from a failed thrift. The real estate agent familiar with this deal told me on the phone that the normal length of time for processing a lease almost identical to this is not 5 months but, in the private sector, 5 days.

Mr. President, I hope that this afternoon our colleagues will support the Kerrey amendment. I am very proud I became an early sponsor of this amendment because I think it strikes at the very heart of what is wrong with this massive bureaucracy which has undergone all of the these major changes in such a very, very quick period of time.

In conclusion, Mr. President, I would cite the head of the General Accounting Office, Mr. Charles Bowsher, who recommended that the RTC and the FDIC be separated and that the RTC be given its own chief executive officer. Although this is a broader recommendation, it does touch on the problem of the RTC's lack of a clear executive. I quote from Mr. Bowsher when he stated, "a question we need to begin discussing now is whether the interest of the American taxpayer would be best served by separating RTC from the FDIC and giving RTC its own chief executive officer."

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I thank the Chair. Under the unanimous-consent request, there are 10 minutes remaining on this side to talk about what I see as the defects of this amendment and why I hope this amendment will be voted down.

The PRESIDING OFFICER. The Senator is correct. The Senator controls 10 minutes. The Senator from Nebraska originally controlled 10 minutes. The Senator from Michigan.

Mr. RIEGLE. Very good. We have had a good debate today on this amendment. We talked earlier in the morning about aspects of it, the fact that while this proposal is one that has been brought forward, there is another proposal that has been offered by Senator Wirth. There is one that has been offered by Tony Frank, former major financial institutional executive who now runs the Postal Service in our country, and other ideas.

We are going to have a hearing in the Senate Banking Committee on April 11, which is less than a month away, to look at all these different organizational change suggestions. My mind is open on these, as I have said, and I think it is fair to characterize the ranking minority Member as saying that he is also, speaking for himself, interested in any of these kinds of ideas that ought to be considered. We have undertaken to establish a time when that ought to be done.

I do not think the time to make this sweeping organizational restructuring change is now on this bill. I say that because this is really a bill to provide funding to close down failed institutions where losses are mounting. We have a situation where, according to the estimates, it is costing us an additional $7 million to $9 million a day to keep institutions open that otherwise should be closed at the present time. I think if we try now, in the case of providing the funding to get that job done, to undertake a major restructuring and reorganization of the RTC board, we will tie this legislation up for some period of time. I do not think this is the time and the vehicle upon which to attempt to get that done.

But I want to make some substantive points. I said earlier today that when the administration first put this design forward, we had a lot of questions about it. It looked very complicated. There was a question of overlap and tension within the structure that might take place, and so forth, but also the issue of whether or not elected officials in the end ought to be accountable for following through and implementing a program dealing with at least $130 billion worth of losses. I think an elected official ought to be in the ultimate position of accountability for how that job is carried out.

The Secretary of the Treasury, to his credit, felt that the importance of carrying out this cleanup effort was such that if it was going to be done, he wanted to accept the responsibility for doing it, wanted the authority, with respect to heading an oversight board, to see that that job would take place.

I think there is something to be said for that argument and, quite frankly, I think the performance to date has not been nearly what it should be, although the GAO has told us that they feel major improvements have been put in place. They think the general operation is getting better. Some areas they think are working very well. But the trouble areas are working better.

In any case, the people responsible for the design of this program, responsible for the administrative side of carrying it out, today have the oversight responsibility in terms of policy setting and direction, and they are accountable. They understand and I think know that over time they will be accountable for the final work that is done here.

We can change that. We can take elected officials out of that position of responsibility, we can put appointed officials in there, and go through the confirmation procedure and such. We can go that route. We already have some independent members on the board. But in terms of changing the balance, shifting over in terms of making it that way, I think there is a real question that arises as to who in the end should be asked to stand up and accept the responsibility directly for the ultimate performance of the RTC.

Let me yield briefly in the time that I have.

Mr. KERREY. The question was who on the board now is elected? The Senator says he wants elected representatives. Who on the board is now elected?

Mr. RIEGLE. The Senator makes a good point. What I mean by that is the persons who are there in the direct stead of an elected official, namely the top financial officer, of the President of the United States, the Secretary of the Treasury, in my view while not himself directly elected, is there standing in for the President of the United States who is elected and who is accountable for the administration of the cleanup of this job. He asked for that job, asked for it in a given structure, and we provided that. We provided the funds. Hopefully we will provide some additional funds today. They are the accountable parties.

In that sense, I think you can know exactly where to look in terms of assessing the quality of the work that has been done. I think that is different in some respects if you move off the current design to appointed members coming out of the private sector who could constitute a majority, and the head of the board being someone who is out of the private sector as someone who directly or indirectly is not an elected person in the same way that I think the Treasury Secretary today stands in that position.

So the Senator is quite right in making that point. But I think the point still stands that there is an accountability through a system of election that is in play here, and if we change that, that authority and that responsibility is shifted. I think some real thought ought to be given before that is done.

Also, I want to say that I think the time to make this major structural revision if we are going to do it is with all due respect not here on the floor. This is not the best procedural way in which to do this.

We have a hearing scheduled on the 11th of April. I have invited the Senator from Nebraska and others who want to testify in this who have other alternative approaches to come in at that time. We will take those up.

I would like to ask for some expert opinion from other parties of interest as to how they react to either this proposed reorganization plan or others. And let us develop a consensus around what might be done and bring that to the floor in the normal course of events, debate that, see where the votes lie, and move ahead in that fashion. I do not think that disadvantages the Senator from Nebraska.

Obviously, we have had this discussion as to whether you get to his intended result sooner or later if you go the route I am suggesting as opposed to the one that he is proposing here. Obviously, we may have a difference of opinion on that.

I think the fastest way to actually get a structural change in place that will have the consensus support that it needs to go all the way through the legislative process is to not try to do it here on the floor today but to come

through the process in the committee starting on the 11th of April.

I hope that will be the course the Senate will take. On that basis, I ask the Senate to turn down this amendment in preference to this alternative procedure that we have laid out here.

I know Senator WIRTH wants to speak. If I have time remaining I would like to yield 2 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator has 1 minute and 54 seconds. That time is yielded to the Senator from Colorado.

Mr. WIRTH. I thank the chairman for yielding.

I think we have a spaghetti mess around here in the RTC. There is no question about it. A lot of streamlining is necessary. A lot of careful thought has to go into this.

The distinguished Senator from Nebraska would get rid of the RTC Board. I think we ought to be getting rid of the RTC Oversight Board instead. I have introduced legislation to not only do that but to make the Office of Thrift Supervision a part of the Office of the Comptroller of the Currency where I think it belongs. The OCC should also be made an independent regulatory agency. I think we have to take a look at the Federal Home Loan Bank System as well. There are a variety of suggestions.

Last year I introduced legislation, savings and loan simplification legislation, so-called SALSA legislation, and would like to reintroduce that legislation today which really goes beyond the single issue raised by the distinguished Senator from Nebraska and others.

Mr. President, I would like to ask unanimous consent that a summary of that legislation and a statement outlining the proposal be included in the RECORD at the appropriate place.

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

Mr. WIRTH. I appreciate that the distinguished Senator from Nebraska is attempting to make the RTC more accountable, streamline it, and make it more effective. However, there are a whole variety of other pieces that relate to this. We ought to pursue this goal in a more comprehensive way, starting in April as the distinguished chairman of the Banking Committee suggests.

We have offered to work with the Senator from Nebraska on this. My staff has been in touch with his office trying to get his ideas as we look at this overall simplification package. There are a lot of elements to it. There is no single solution to the RTC's problems. Let us address these concerns carefully and thoughtfully in the proper procedure. I thank the distinguished chairman for yielding.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. How much time do I control?

The PRESIDING OFFICER. Four minutes 15 seconds.

Mr. KERREY. Mr. President, I know my colleagues are wrestling with the question of whether or not they are going to vote for $30 billion of taxpayer money to go in the Resolution Trust Corporation. That is a lot of money, $30 billion.

I assume they, like I, have tried to discover whether or not this process is going according to plan, not that it is perfect, and that it is not unpleasant. I am trying to iron out unpleasantries, whether or not in fact the taxpayer money is being spent correctly.

I have heard people say what I am proposing to do is abolish the RTC. I am not. This is a simple procedure to create a full-time board so that I have a strong chairman, and so that we can go to the American people.

I have heard, well, Secretary Brady is out there. He is a direct personal friend of the President. He is almost as if he is elected. He has a special quality about him.

But I ask my colleagues. Has Secretary Brady before the American people presenting this policy, given a speech talking about the savings and loan problem and all the different things we have to do? Has he been out to the American people saying to them I know your Congress has a tough decision right now to vote the money, but support them when they vote it.

Instead what we are hearing is if we do not vote the money it will cost us $49 million a day. The RTC has already cost us money the last 18 months. I am asking my colleagues to examine the RTC. If you believe they are doing a great job, vote the $30 billion. If you believe they lost this money already, and that they will lose money in the future unless we make this change, then look for some suitable way to change this structure now.

That is the conclusion of this. It is real simple. I do not believe they are getting the job done now. I believe they are costing us money in the manner in which they are handling it. I believe we cannot wait. Every day we wait the RTC is going to have a difficult time resolving this difficult issue. They will have a difficult time selling assets, a difficult time making decisions, and once every 2 months the Oversight Board will meet to try to determine what it is doing and what it ought not be doing. That is not enough.

There is inadequate oversight going on right now on the part of that policy board, not as a consequence of their inadequacy, their personal incompetence, or anything like that. But it is simply because they do not have the time to do it. That is the central argument that I am making here today.

We will have a rollcall vote on whether or not to take $30 billion from the taxpayer. This is an issue of fiscal responsibility. The money is not being well spent now.

Mr. President, I urge my colleagues to consider that we ought not appropriate any additional money unless we make sure that we have the kind of accountability and oversight that indeed I think we will require in every other area of Government.

Earlier I referenced the fact that after no sleep at all Secretary Cheney came to the appropriations committee and in detail presented the requirements of Desert Storm. But no such presentation I think has been made in this particular case. We are simply being asked, trust us a little bit more. We have done the best we can, trust us a little bit more. I believe they have done the best they can. I think we can do better.

I hope my colleagues look at this amendment not as undercutting the President, but, indeed, reinforcing the authority of the President. This gives us the opportunity to resolve this faster and least expensively for the American taxpayers.

I yield the floor.

The PRESIDING OFFICER. The Senator has 42 seconds left.

Mr. RIEGLE. Mr. President, I wonder if the Senator will yield briefly for 15 seconds from the time he has left.

Mr. KERREY. Yes.

Mr. RIEGLE. We do have some accountability requirements in the bill itself, the underlying bill, in addition to the $30 billion. I want to draw attention to that. The Senator from Nebraska might wish to do it in a different form, but they might want to look at that.

Mr. KERREY. I observe the accountability provisions in there, and I do not fault the chairman or the Banking Committee. They have done a terrific job in trying to make sure this is in place. Again, simply put, we have a policy board in charge of $150 billion that only has the time to meet every 60 days. It is not enough. We need a better system than we have.

The PRESIDING OFFICER. The time of the Senator has expired. All time has expired.

The question is on agreeing to the amendment of the Senator from Nebraska.

Mr. RIEGLE. Mr. President, I move to table the amendment.

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

The PRESIDING OFFICER. The Senator from Michigan moves to table the amendment. The yeas and nays have been requested.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion to table the amendment of the Senator from Nebraska.

The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER (Mr. REID). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—63

Bentsen	Gorton	McCain
Biden	Graham	McConnell
Bond	Gramm	Mitchell
Breaux	Grassley	Murkowski
Brown	Harkin	Nunn
Burns	Hatch	Packwood
Chafee	Hatfield	Pressler
Coats	Heflin	Riegle
Cochran	Heinz	Roth
Cohen	Helms	Sarbanes
Craig	Inouye	Sasser
Cranston	Jeffords	Seymour
D'Amato	Johnston	Simpson
Danforth	Kassebaum	Smith
Dixon	Kasten	Specter
Dodd	Kennedy	Stevens
Dole	Levin	Symms
Domenici	Lieberman	Thurmond
Durenberger	Lott	Wallop
Garn	Lugar	Warner
Gore	Mack	Wirth

NAYS—37

Adams	Exon	Nickles
Akaka	Ford	Pell
Baucus	Fowler	Pryor
Bingaman	Glenn	Reid
Boren	Hollings	Robb
Bradley	Kerrey	Rockefeller
Bryan	Kerry	Rudman
Bumpers	Kohl	Sanford
Burdick	Lautenberg	Shelby
Byrd	Leahy	Simon
Conrad	Metzenbaum	Wellstone
Daschle	Mikulski	
DeConcini	Moynihan	

So the motion to table the amendment (No. 25) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, I want to indicate that in the order we had discussed earlier, Senator SPECTER has a nongermane issue that he intends to raise next, which is a sense-of-the-Senate resolution dealing with war crimes. I do not know precisely what the substance of his amendment is because we have not had a chance to discuss that. He intends to be back on the floor in approximately 10 minutes, and so there will be a brief hiatus until then. If there is anyone else who wants to speak in that period of time, he or she should do so.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

U.S. ECONOMIC COMPETITIVENESS

Mr. BYRD. Mr. President, I commend the distinguished Senator from Oklahoma [Mr. BOREN] for introducing this legislation earlier today along with the distinguished Senator from Texas [Mr. BENTSEN] and myself.

We have been working closely for a year now on legislation designed to make our foreign aid programs more relevant to our economic competitiveness in the world. It has been clear for some time that the other major international so-called donor countries, particularly Japan and Germany, and also including the United Kingdom, France, Canada, and Italy, tie their foreign aid with strong strings wrapped around their home industries and they are smart to do that. Their aid-giving is designed to improve their own economic strength in the world, and I am sure that it is beneficial to the recipient countries as well. The United States has not been aggressive enough in tying foreign aid and economic competitiveness together, and we could do much in this area.

In order to confirm and deepen our understanding that major changes need to be made in our aid-giving practices, I authored an amendment to the supplemental appropriations bill last year. The amendment was adopted on April 27, 1990. My amendment, which was cosponsored by Mr. BOREN, Mr. DOLE, Mr. KASTEN, Mr. ROCKEFELLER, and Mr. DOMENICI, directed that the Department of Commerce lead an interagency study on the full range of issues related to tied-aid practices. The study, which has been completed, was to reexamine thoroughly the "mechanisms and ways by which the international economic competitiveness of the United States may be enhanced" through our aid programs and to examine the practices engaged in by the other donor countries.

It has been clear for some time that other nations do more to promote their economies by tying their foreign aid programs to their own industrial and business interests. A 1989 report by the Center for Strategic and International Studies on this matter concluded that the impact of U.S. inattention to the opportunities to promote U.S. exports has been substantial, estimated to be between $2.4 and $4.8 billion in losses to American exporters per year. The challenge is to interweave our development assistance with our export competitiveness, and to take advantage of the opportunities now available in new markets, such as in Eastern Europe.

The study has been very well received as an important contribution to our understanding of this complicated area. It is a lengthy document, and so I will only insert in the RECORD the executive summary and the final chapter on suggestions to enhance U.S. international economic competitiveness. I compliment the authors of the study and the Department of Commerce for this excellent work. The executive summary points out that U.S. aid programs are characterized by a "lack of coherence" regarding the access that U.S. firms have to Government financing under several different programs for exports, foreign investment, and other business-related activities. It finds that, in comparing the activities of seven major international donor countries, in the general categories of capital aid, such as economic infrastructure and production, "the lowest share is that of the United States, which directs 14 percent of its aid to transportation, communications, energy, agriculture, industry, mining, and construction." Italy and Japan, in comparision, "spent over 60 percent of their aid in these sectors," aid which is specifically linked to the donor countries' home industries.

Indeed, the major recommendation of the study, the creation of a special so-called third window in AID, to focus resources exclusively on a capital projects fund tied to U.S. industries has been incorporated into the legislation that we are introducing today. As the study concludes, the "third window would provide grants for U.S. exports for developmentally sound capital projects in developing countries * * * taking the commercial benefits into account." This special fund would augment bilateral and regional aid resources for some countries or finance projects in other developing countries, including Eastern Europe, which normally have received little or no traditional aid funding. The study concludes that this third window "will provide assistance to exporters and increase the administration's flexibility in resource allocation."

The bill introduced today calls this third window a "mixed credit facility" and would provide $350 million for the financing of capital projects. I would hope that the chairman of the Foreign Operations Subcommittee of the Appropriations Committee, Mr. LEAHY, would favorably consider this approach in his markup of the fiscal year 1992 foreign aid bill. Indeed, Mr. LEAHY has already indicated on this floor on February 6, 1991, his interest in this matter, citing an important article in the Washington Post of January 13, 1991, on the aggressive practices of the Japanese. The article pointed out that—

> While the United States slashes its foreign aid budget and rethinks its international assistance, Japan is using its bountiful aid coffer to develop Third World markets for the 21st century in many cases using development aid explicitly to promote Japanese companies against Western competitors.

Now, they are smart. They are looking out for home base. They believe that charity begins at home. They are putting their country first and I salute them for it.

The full article was placed in the RECORD by Mr. LEAHY on February 6, 1991.

Last year I also offered an amendment to the foreign aid appropriations bill to provide that up to $500 million of the regular economic support fund money, which totals some $3.1 billion for fiscal year 1991, be used to promote U.S. exports. The conference committee included this requirement in its

final conference report at a level of $300 million.

So the amount of money that I had in my amendment was reduced but to a level of $300 million. I hope that we will be getting indications soon that the Agency for International Development has in fact made an effort to increase our tied commercial aid at levels approaching that of the amendment.

The United States is an international power. But the demands of that role which we have met in splendid fashion in the Persian Gulf should also serve to remind us that we cannot financially afford to play the role of world policeman. We are asking our allies to pay their fair share of the costs of Desert Shield. These same allies are busy securing foreign markets for their businesses, and they are using their foreign aid programs as an important tool in that effort.

It is high time that the administration tackled this obvious weakness in our foreign policy and paid more attention to the needs of our industrial and commercial base. The long-run effect of continued inattention will only be to further weaken our ability to play a responsible role in the world.

Again, I commend Mr. BOREN and Mr. BENTSEN for joining in this initiative, and believe that this year we may make some substantial progress in the area of tied aid.

Mr. President, I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I wanted to commend the distinguished chairman of the Senate Appropriations Committee in raising what I think is a very important issue.

I am concerned about the area of tied aid. In a perfect world we will not even have to consider such an issue. But as the distinguished chairman has appropriately pointed out, there are a lot of other nations that compete with us and also tie their aid in a way to improve their competitiveness.

I get very concerned. For example, in these past few months while the United States has borne the lion's share of the burden in Desert Storm, two allies which will benefit much by keeping that supply of oil unhampered, Japan and Germany, have done precious little. We hear the check is in the mail. We keep hearing it is.

I intend soon, Mr. President, to report on a regular basis to the Senate on just how much has been promised, and just how much has shown up in the till, so that we do not forget in the euphoria of having a very, very successful campaign in the gulf that there are still some people who owe some money here.

I think it goes without saying that any Member of the Senate, who knows the distinguished Senator from West Virginia, who has served even a fraction of the time that I have—now beginning my 17th year serving with him—knows the chairman of the Appropriations Committee is going to not only check those figures they received but the money coming in. I suspect checking more than once, and we will have probably as tight and tough and careful an accounting as anybody.

But on the question of tied aid, it makes no sense for us to look at other countries, very wealthy countries, Japan and others, who are sending out aid only as it benefits them directly, or their companies and manufacturers directly, without the consideration of the humanitarian aid that we do. We are going to have more tied aid on the part of the United States. I look forward to working with the distinguished Senator from West Virginia in that regard. He knows of my own concern. I appreciate the kind comments he made about that.

I think if there is ever a year where we should face that issue square on, it is this year. I am convinced that we will.

I yield the floor.

Mr. BYRD. Mr. President, I wish to thank the distinguished Senator from Vermont. He suggested, just as I felt he would, and has indicated a continuing strong interest in this matter. I am sure that being in the position that he holds he will be able to exert strong pressure on helping to influence the thinking of our powers that be as they develop the foreign policy of this country in the future.

Mr. President, I ask unanimous consent to be included at the close of my remarks an executive summary of the report to which I have referred together with a supplement entitled "Enhancing U.S. International Economic Competitiveness" which also is shown.

Mr. President, I yield the floor.

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

INTERNATIONAL FINANCING PROGRAMS AND U.S. INTERNATIONAL ECONOMIC COMPETITIVENESS

(A Study Prepared by the U.S. Department of Commerce International Trade Administration, September 20, 1990)

EXECUTIVE SUMMARY

On May 25, 1990, Congress mandated the Secretary of Commerce to examine the use of foreign assistance and other government international financing programs to advance national economic interests on the part of the United States, France, Germany, Japan, and the United Kingdom. The mandate also directed that mechanisms and ways be explored to enhance U.S. international economic competitiveness through such financing programs.

Chapter I describes the financing programs of the U.S. Agency for International Development, the Export-Import Bank, the Commodity Credit Corporation, the Overseas Private Investment Corporation, and the Trade and Development Program, together with their foreign counterparts. It is found that U.S. firms have access to government financing under several different programs for their export, foreign investment, and other business-related activities.

Chapter I notes, however, that some observers have perceived a lack of coherence among the U.S. programs. Particularly with regard to tied aid, they believe that U.S. economic assistance and business support functions tend to diverge instead of proceeding in an integrated and coordinated manner. Thus, the question has been raised as to whether AID can do more at the margin to support U.S. trade and investment interests. The objectives remain of attempting to enhance U.S. international competitiveness while establishing strong and vigorous AID programs.

Chapter II finds that developing countries received, net, over $100 billion in resources from all sources in calendar year 1988. Almost two-thirds consisted of official development finance, while one-third were private flows. Net export credit flows were low. By the late 1980s, official development finance had surpassed private and export credit flows to become the largest component of net resource flows to developing countries.

Bilateral Official Development Assistance (ODA) from the seven largest donors totalled $36 billion in 1987. The U.S. share, though large, was stagnant over time, while the levels of most of the other six donors were rising. In June 1990, the Development Assistance Committee (DAC) released provisional 1989 data indicating that, for the first time, the amount of U.S. net ODA disbursements fell to second place among DAC countries, after Japan's.

On aid-tying, the United States, with 45 percent of its aid funds reported as untied in 1987, is in the middle range of the seven major donor countries. Formal aid-tying is supplemented, however, by informal mechanisms to enhance the export reflows from aid; some such mechanisms are discussed. The study explores "additionality" strategies by aid recipients and donors and cites the views of a number of observers that donors' aid-tying can be enhanced by concentrating aid on capital projects and minimizing it on cash transfers and basic human needs projects.

On sector distribution, the seven major donors as a group devote a large share of their aid to purposes classified by the DAC as "Economic Infrastructure" and "Production." The lowest share is that of the United States, which directs 14 percent of its aid to transportation, communications, energy, agriculture, industry, mining, and construction. Italy and Japan spent over 60 percent of their aid in these sectors.

The regional distribution of aid reflects long-standing economic and geopolitical interests of donor countries, rather than commercial motives. Geographic ODA concentration in traditional markets tends to freeze out other countries' suppliers. On the other hand, a donor's historic geographic patterns constrain the flexible use of ODA to penetrate non-traditional markets where other donors predominate.

On an individual country level, however, some aid recipients have become known as "spoiled markets." They are seen to be blanketed with ODA tied to specific capital projects, such that concessional financing is essential or customary for capital goods sales. The same countries tend to be repeatedly named as spoiled markets and are the target of the most recent U.S. Government efforts to counter commercially-motivated tied aid.

Chapter III discusses three special topics: Financing for Eastern Europe, environ-

mental protection in Eastern Europe, and U.S. tied aid policy. With regard to the first, the study finds that over $22 billion of financing has been pledged for Hungary and Poland during the past year, but cautions that these pledges should not, for several reasons, be considered as aid in the same sense as aid for developing countries. Around $11 billion of the total is earmarked for Polish debt relief and Stabilization Fund. The remainder is mostly in the form of export credit and investment insurance and guarantees on market-related terms; thus, ample resources appear available to sustain European and Japanese commercial activities in Poland and Hungary. Since a pattern of concessional lending has not yet surfaced for Eastern Europe, the terms of U.S. financing seem to be competitive, but the supply of the U.S. financing may need to be augmented if American firms are to have access to financing for their Eastern European business.

The environmental protection needs of Eastern Europe are described, and various approaches to safeguard the environment are outlined. U.S. firms, with a vast reservoir of pollution abatement technology and equipment developed over two decades of experience with domestic environmental problems, are in a position to assist Eastern Europe. Large amounts of financing will be required. Some $300 million of bilateral funds made available is a useful first step; additional financing can be expected as pollution control technology is incorporated in new facilities being built with financing under the general export credit lines.

U.S. policy on tied aid is reviewed. The overarching objective throughout has been to remove credit subsidy, including commercially-motivated aid, as an element of trade competition while maintaining a flow of resources on appropriate terms to needy developing countries. The evolution of U.S. policy and the introduction of limited financial countermeasures are described. The most recent countermeasure, in May 1990, is the creation of a joint AID/Eximbank $500 million pool of funds for capital goods financing in the spoiled markets of Indonesia, Pakistan, the Philippines, and Thailand.

Chapter IV recounts the views of private sector spokespersons. They emphasize the need for a national policy integrating aid and trade objectives and claim serious adverse impacts from tied aid on their business. Skepticism is expressed about the results of the U.S. negotiating strategy. Several underscore the importance of maintaining exports of capital goods and emphasize the developmental benefit of capital projects. The creation at AID of a financing facility dedicated to the financing of capital goods is recommended.

Chapter V explores the concept of a "Third Window" at AID as a basis for further joint development by Congress and the Administration. The Third Window, which would supplement the existing Development Assistance and Economic Support Fund at AID, would finance U.S. exports for capital projects in developing countries and not compete for resources against Basic Human Needs nor budgetary/commodity funds provided in the existing programs. The structure of the Third Window would enhance additionality and would be authorized at a modest percentage of development assistance appropriations.

V. ENHANCING U.S. INTERNATIONAL ECONOMIC COMPETITIVENESS

Congress directed that this study explore ways and mechanisms to enhance U.S. international economic competitiveness through financing programs. One idea that has often been brought forth is the creation of a capital projects fund within AID to supplement Economic Support Funds (ESF) and Development Assistance (DA) resources. This capital projects fund has sometimes been called the "Third Window."

The Third Window would provide grants for U.S. exports for developmentally sound capital projects in developing countries. The Third Window must be free of regional and country earmarking in order that the recipient perceives that the aid resources are to be tied directly to new procurement. Its funds could be combined with Eximbank or private finance at market rates, multiplying total resources availability. The Third Window would be operated in accordance with the OECD Export Credit Arrangement and would not be subject to the Basic Human Needs criteria.

Such a structure would enable AID to provide grants to developing countries for developmentally-sound capital projects, taking commercial benefits into account. To work effectively, the Third Window must operate flexibly and respond to the widespread opportunities in the various areas of the developing world. A pro of the approach, therefore, is its greater flexibility. Centrally-funded Third Window resources would augment bilateral and regional aid resources for some countries or finance projects in other developing countries that normally receive little or no DA or ESF funding, including middle-income countries. The Third Window could also support U.S. suppliers at the bidding stage as well as on upcoming projects in a longer time frame. Third Window resources would not be transferred to other uses and, if unobligated at the end of the fiscal year, would lapse.

The Third Window will provide assistance to exporters and increase the Administration's flexibility in resource allocation. A con is its cost. Under the budget agreement, both the Administration and the Congress agreed to a five-year cap on international discretionary spending. Resources for the Third Window must come from cuts to other programs, including possibly other foreign aid programs.

In the near-term, apart from a full-fledged Third Window, and in order to address exporters' concerns within budget constraints, the Administration has sought a creative approach to increase the economic impact of our assistance in the United States while contributing to our overall development objectives. In May 1990, AID and Eximbank announced the creation of a $500 million facility to finance the export of U.S. goods and services for developmentally sound capital projects in Asian markets. AID's contribution to this facility will be $100 million with the remainder provided by Eximbank in the form of War Chest grants and loan guarantees. This facility is intended to finance capital projects in four Asian countries (Indonesia, Pakistan, the Philippines and Thailand) and four key sectors (construction, energy, transport, and telecommunications).

Bilateral agreements were concluded with Thailand and Indonesia to provide $125 million of mixed credits to each country for capital projects development. A Philippine mixed credit facility has also recently been created. Although Pakistan has been on a slower track, we hope to conclude bilateral agreements in November. Cooperation between AID and Eximbank has been excellent.

Another method to contribute to improving U.S. competitiveness overseas is to make full use of AID's "Buy American" policy. AID Administrator Roskens has ordered that a new system be devised for collecting AID expenditure data by the source and origin of the procurement. In addition, he has ordered that local procurement be restricted by limiting procurement waiver authority. The Administrator has further directed that AID be prepared to provide Congress and the American people with progress reports on the implementation of this "Buy American" policy. The first such report should be available in about five months.

In addition, the Administration has taken preemptive action to meet the needs of our exporters without spending additional resources. Most recently, the Administration has been successful in keeping tied aid out of Eastern Europe. Since the 1970s the Administration has successfully used the War Chest and AID funds in selected cases both defensively and offensively to discipline foreign tied aid practices, increased the concessionality level of tied aid, and improved notification procedures. The Administration will continue to discipline predatory tied aid practices through aggressive use of available funding and sustained negotiations.

In conclusion, any U.S. response to the problems of tied aid and export subsidization that would change foreign aid policy or increase capital project expenditures must avoid increasing the budget deficit or sacrificing important foreign policy objectives. The Administration welcomes a continuing dialogue with Congress on this important issue.

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

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

The Senator from Pennsylvania is recognized.

RESOLUTION TRUST CORPORATION FUNDING ACT

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I ask unanimous consent that the D'Amato amendment be set-aside.

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

Mr. SPECTER. Mr. President, I now yield to the managers who will propound a unanimous-consent request with respect to the amendment which I am about to offer.

Mr. GARN. Mr. President, the unanimous-consent agreement is still being approved by the leadership, and if the Senator can go ahead and speak, we will interrupt him when we are ready to go.

AMENDMENT NO. 27

(Purpose: To amend the Resolution Trust Corporation Funding Act of 1991 to encourage the President of the United States to confer with the sovereign state of Kuwait, countries of the Coalition or the United Nations to establish an International Criminal Court or an International Military Tribunal to try and punish all individuals, including President Saddam Hussein, involved in the planning or execution of Crimes against Peace, War Crimes, and Crimes against Humanity as defined under international law)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 27.

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

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

The amendment is as follows:

At the appropriate place insert:

Findings:

The International Military Tribunal at Nuremberg held the initiation of a war of aggression to be "not only an international crime (but also) the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole;"

On August 2, 1990, and without provocation, Iraq initiated a war of aggression against the sovereign state of Kuwait;

The Charter of the United Nations imposes on its members the obligations to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" and to "settle their international disputes by peaceful means;"

The leaders of the Government of Iraq, a country which is a member of the United Nations, did violate this provision of the United Nations Charter;

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) imposes certain obligations upon a belligerent State, occupying another country by force of arms, in order to protect the civilian population of the occupied territory from some of the ravages of the conflict;

The public testimony of victims and witnesses has indicated that Iraqi officials violated Article 27 of the Fourth Geneva Convention by their inhumane treatment and acts of violence against the Kuwaiti civilian population, including women;

The public testimony of victims and witnesses has indicated that Iraqi officials violated Articles 31 and 32 of the Fourth Geneva Convention by subjecting Kuwaiti civilians to physical coercion, suffering and extermination in order to obtain information;

Article 146 of the Fourth Geneva Convention states that persons committing "grave breaches" are to be apprehended and subjected to trial;

"Grave breaches" are defined to include: "willful killing, torture or inhuman treatment . . ., willfully causing great suffering or serious injury to body or health, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity;"

Both Iraq and Kuwait are parties to the Fourth Geneva Convention;

On several occasions the United Nations Security Council has found Iraq's treatment of Kuwaiti civilians violative of international law;

In Resolution 665, adopted on August 25, 1990, the United Nations Security Council deplored "the loss of innocent life stemming from the Iraqi invasion of Kuwait;"

In Resolution 670, adopted by the United Nations Security Council on September 25, 1990, it condemned further "the treatment by Iraqi forces on Kuwaiti nationals and reaffirmed that the Fourth Geneva Convention applied to Kuwait;"

In Resolution 674, the United Nations Security Council demanded that Iraq cease mistreating and oppressing Kuwaiti nations in violation of the Convention and reminded Iraq that it would be liable for any damage or injury suffered by Kuwaiti nationals due to Iraq's invasion and illegal occupation;

The Geneva Convention Relative to the Treatment of Prisoners of War (the Third Geneva or POW Convention) sets forth standards for the treatment of civilians and incapacitated combatants during time of hostilities;

Iraq is a party to the POW Convention;

There is evidence and testimony that Iraq violated articles of the POW Convention by its physical and psychological abuse of military and civilian POW's including members of the international press;

There is evidence and testimony that Iraq violated articles of the POW Convention by placing POW's in solitary confinement, failing to shelter POWs against air bombardment and denying POWs contact with the outside world;

In Resolution 667, adopted on September 16, 1990, the Security Council expressed "outrage" at Iraq's abduction of several persons from diplomatic premises in violation of the Vienna Conventions on Diplomatic and Consular Relations;

In violation of the Fourth Geneva convention, Iraq did fire missiles on Israel with the intent of making it a party to war and with the intent of killing or injuring innocent civilians;

Iraq has inflicted grave risk to the health and well-being of innocent civilians in the region by its willful setting on fire of Kuwaiti oil wells and its willful spilling of oil into the Persian Gulf, resulting in the mass pollution of air and water;

For all of the above incidents, it is not a defense that an individual in committing such heinous acts acted under orders of higher government officials (International Military Tribunal (Nuremberg) Judgment and Sentences, 41 A.J.I.L. 172 (1946) ("That a soldier was ordered to kill or torture in violation of international law of war has never been recognized as a defense to such acts of brutality.");

The Nuremberg tribunal provision which held that "crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced"' is as valid today as it was in 1946;

A failure to try and punish leaders and other persons for crimes against international law establishes a dangerous precedent and negatively impacts the value of deterrence to future illegal acts.

Therefore it is the sense of the Senate that the President should confer with Kuwait, other Member Nations of the Coalition or the United Nations to establish an International Criminal Court or an International Military Tribunal to try and punish all individuals involved in the planning or execution of the above referenced crimes, including Saddam Hussein.

Mr. SPECTER. Mr. President, this is an amendment calling for a sense-of-the-Senate resolution for the President, after conferring with our coalition allies, to establish an international criminal court to try Iraqi war criminals.

I am advised that the distinguished chairman of the Foreign Relations Committee has another commitment. Therefore, I will be pleased to yield to him at this time, before regaining the floor to state the objective of the amendment and the reasons for the amendment.

The PRESIDING OFFICER. Just so that it is understood, the Senator from Pennsylvania has yielded the floor, and the Senator from Rhode Island will be recognized, and it will be the requirement under the rules of the Senate that the Senator from Pennsylvania seek recognition.

Mr. SPECTER. Mr. President, I ask unanimous consent to be permitted to yield to the Senator from Rhode Island, with the understanding that when he concludes his statement, I retain the right to the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. PELL. Mr. President, I thank my colleague from Pennsylvania for his courtesy and help here.

I rise to express my general support for the concept of a war crimes tribunal and war crimes trials. I speak perhaps objectively, because my own father was a U.S. representative of the U.N. War Crimes Tribunal Commission that set the groundwork for Nuremberg after World War II. I remember his theory, and the one of those of us who followed the war crimes trials, was that by having such a procedure, it perhaps might discourage in the future other aggressors from engaging in a war, if they knew that if they were defeated, they would suffer for their misjudgment and maljudgment. This is a good amendment, and I look forward to supporting it.

Mr. SPECTER. Mr. President, I thank my distinguished colleague from Rhode Island for his words of support. I think that the endorsement by the distinguished Senator from Rhode Island is very meaningful in light of his extensive experience in the field and the reference he has made of his own family background in this important matter.

Mr. President, the thrust of this amendment is to see to it that President Saddam Hussein of Iraq, the Iraq Revolutionary Council, and all others who may be liable for war crimes are

brought to trial in accordance with principles of international law.

We have witnessed a historic event in the course of the past several months, where, for the first time, there has been action by an international organization under the principles of collective security. Indeed, the dreams of Woodrow Wilson, after World War I, regarding a League of Nations, have now been realized with the action of the United Nations in the gulf war. The gulf war has established a historic principle as the international community has banded together to thwart aggression.

A very important corollary to this international action, Mr. President, is to proceed to identify those against whom evidence of war crimes exists and to proceed with criminal prosecutions.

It is a violation of international law to carry on a war of aggression, and it is a violation of international law to violate the U.N. Charter in such a war of aggression.

Beyond that, there have been allegations of numerous violations of international law; I state allegations with some care at this time, because they are in the form of charges. There has been a tremendous evidentiary base laid by what we have seen through the medium of television, and what we know as a matter of what you might call judicial notice, with atrocities against the people of Kuwait, with violations of the rights of prisoners of war, with United States citizens being taken hostage and being placed at strategic sites as human shields, and with some 39 Scud missiles being lobbed into Israel aimed at major population centers like Tel Aviv. We maintain, for the purposes of criminal process, the allegation of presentation of evidence to be lodged against those where a prima facie case exists, which should be and can be carried forward if the appropriate tribunal is established.

Following World War II, at Nuremberg, we did establish the principle that individuals would be held liable for their conduct. The principle was established that it was no defense for an individual to claim that he or she had acted pursuant to orders from a superior officer.

As the distinguished Senator from Rhode Island pointed out, a portion of this consideration was to act as a deterrent to others who would know that if they carried out acts in violation of international law, which constituted war crimes, that they would be held personally liable.

In October 1990, President Bush put President Saddam Hussein and Iraq on notice that it was the intention of the world community to hold individuals liable for war crimes.

As the war has ended, it is not possible at this time to bring individual Iraqis into custody because the mandate of the United Nations was limited to ousting Iraq from Kuwait, and the U.N. forces, led by the United States, observed that mandate.

We now have the undesirable consequence of having the war over but having Saddam Hussein remain in power. What his eventual fate will be is unknown. It is the hope of many, including this Senator, that the people of Iraq will find a way to oust him as their leader.

It would be my hope that sanctions will be maintained. Certainly, military sanctions against Iraq ought to be maintained permanently. But economic sanctions ought to be maintained as well, except for food and medical supplies to the people of Iraq, against whom we have no quarrel.

To the extent that more sophisticated economic sanctions could be maintained, it would be, as I say, the hope of many, including this Senator, that the people of Iraq would find new leadership for themselves. If that were to be the case, then there would be the issue of taking Saddam Hussein and others into custody. However, as we discussed this matter today, there cannot be a comprehensive answer articulated as to how that will occur.

It is my belief we ought to start the machinery in motion. The logical first step to take is this Senate resolution which would express, and I hope forcefully, a desire to hold individual Iraqi officials responsible for their actions. Although the managers have already stated their intention to attempt to table my amendment because they are tabling all of the pending amendments, it could be possible the managers might vote against their own tabling motion if they agree with the principle of the sense-of-the-Senate resolution.

Mr. RIEGLE. Will the Senator yield just briefly at that point on that matter?

Mr. SPECTER. I do.

UNANIMOUS-CONSENT AGREEMENT

Mr. RIEGLE. I would like to now enter into a unanimous-consent agreement that establishes the time we have worked out between ourselves and enter that into the RECORD. Also, if I may just do that, I will raise one other question with the Senator just with respect to how we will manage the disposition of his amendment.

Mr. President, I ask unanimous-consent that there be 1 hour for debate on the Specter amendment No. 27 with the time equally divided and controlled in the usual form; that 30 minutes of the time be utilized today and the remaining 30 minutes be used when the Senate resumes consideration of S. 419 on Thursday, March 7; and that no amendments be in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. RIEGLE. Further, I might just say, while having the floor here, that perhaps what we could also do, because this issue is apart from the normal subject matter of the bill under consideration, that we could, when we finish debate, put the vote for that at the end of our discussion to occur just prior to third reading so that we could have the vote at that time after the other business directly related to the bill has been handled in the normal form. Would the Senator find that an agreeable course of events?

Mr. SPECTER. If the Senator would yield, I thank my distinguished colleague from Michigan for that suggestion, and that is agreeable. It would be my hope at that juncture, after having conferred briefly with the ranking Republican on the Banking Committee—and I understand the principle that the tabling is done, so that the amendments can be defeated and move to final passage—that there might be an interest even on the part of the managers of the bill in supporting this resolution. I think that chronology would accommodate that direction.

Mr. RIEGLE. Very good. Then I will not enter a unanimous-consent request on that aspect but only then proceed with the understanding that the vote will then come just prior to the third reading on the Senator's amendment.

Mr. SPECTER. That would be perfectly acceptable, Mr. President.

The PRESIDING OFFICER (Mr. KERREY). Is there objection to the request? If not, it is so ordered.

Mr. RIEGLE. I thank the Chair and I thank the Senator from Pennsylvania.

Mr. SPECTER. I thank the distinguished chairman of the committee for propounding that unanimous-consent request.

Parliamentary inquiry, Mr. President. Pursuant to that unanimous-consent agreement, is it true that time begins to run at this point?

The PRESIDING OFFICER. The Senator is correct.

The Senator has 15 minutes.

Mr. SPECTER. I thank the Chair.

Mr. President, I had started the comment about the—would the Chair repeat what the Chair just said.

The PRESIDING OFFICER. The Senator has 14 minutes and 49 seconds.

Mr. SPECTER. Was the unanimous-consent request for 1 hour, equally divided?

The PRESIDING OFFICER. Thirty minutes tonight and thirty minutes tomorrow.

Mr. SPECTER. I thank the Chair.

I had started to discuss the question of the potential ouster of Saddam Hussein and an opportunity for Saddam Hussein and others who might be charged with war crimes to be taken into custody and had noted that this was problematical at this point because we do not know what is going to happen.

The customary approach in a criminal prosecution is to take defendants

into custody and have them in court and to have them present when the proceedings go forward with an opportunity to defend themselves. It may well be these criminal proceedings could go forward even though Saddam Hussein and other defendants were not present.

That would constitute a trial "in absentia", a Latin expression which means while they are absent. There is precedent for trying a defendant while the defendant is not present but is in fact absent. Under the Nuremberg war trials there were defendants who were tried in absentia; that is, they were not present. And there is precedent in U.S. law where an individual may be tried in a variety of circumstances, again, in absentia, when that individual is not present for a variety of reasons.

So there is ample precedent for proceeding with the criminal prosecution even in the absence of Saddam Hussein or of other defendants.

Mr. President, the trial should be held for many reasons. One reason is there should be a clear-cut statement by the world community of the abhorrence of the actions of Iraq in conducting this war of aggression against Kuwait, abhorrence at the atrocities against the citizens of Kuwait, abhorrence against the treatment of United States nationals, and abhorrence at the sending of missiles into civilian populations, Tel Aviv, for example, without any conceivable purpose or military objective.

This proceeding is also of enormous importance in laying out the evidence to the world as to the conduct of Saddam Hussein and others so that there would be no mistake that Saddam Hussein is not an international hero by anybody's standards and that the conduct of the Iraqis is deplorable and the conduct of Saddam Hussein is subject to world censure.

We have had a curious process in the course of the past many months, Mr. President, as we all know. There were many in the world who were lauding Saddam Hussein as a great hero, even as he perpetrated this horrible chain of conduct. There has been a suggestion that Saddam Hussein might emerge as a political victor, even though he had led his nation to the worst military defeat in the history of the world.

It appears at this time, with the Iraqi surrender and the unconditional withdrawal of Iraq from Kuwait, that there is little basis for a contention to be made that Saddam Hussein has emerged in any sense as a victor. But even as we discuss this matter at the moment, it cannot be ruled out for a certainty that there will not be some who will claim that Saddam Hussein and Iraq have emerged in some way with some sort of a political victory.

I think it is accurate to say, Mr. President, that if a war crimes trial ensued where the evidence was put on as to what happened to the citizens of Kuwait, where men and women came forward and testified as to what happened to those individuals—and there are horrendous stories to be told, evidence of firsthand experience from people who were subjected to the worst sort of treatment, including torture and murder and rape and pillage, and worse—that no one could rightfully say that Saddam Hussein, or Iraq, had any claim to any sort of a victory here.

The evidence should be educed in a court of law as to the treatment of prisoners of war, both military prisoners of war and civilian prisoners of war. There should be on the record, in a permanent form, beyond the television newsreels, the 39 Scud attacks and the Israeli citizens who were murdered in those Scud attacks, and the Israeli citizens who were murdered as a result of strangulation or inability to handle the gas masks, or the many who were wounded as a result of those attacks. All of this ought to be made a part of the record of an international court of justice or tribunal to be established along this line.

So that even if Saddam Hussein and the other Iraqis are tried in absentia, the proceedings would have enormous importance.

I think it is important in addition, Mr. President, that the Senate articulate its sense of supporting such war trials since the Secretary of State will be making a trip to the Arab world. Already there has been some talk about an Arab peacekeeping force. To the extent the Arabs can undertake that responsibility, I am wholly in favor, although I think there will have to be some U.S. presence, at least air and sea, and hopefully a U.N. presence, to maintain security in the area.

But it is important that when the Secretary of State goes, that there be a resounding vote by the United States Senate saying to the world that we believe there ought to be an international tribunal constituted to prosecute war crimes against Saddan Hussein and other Iraqis against whom such evidence may be present.

Mr. President, I inquire as to how much time remains?

The PRESIDING OFFICER. The Senator has 7 minutes, 10 seconds.

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

Mr. GARN. Will the Senator withhold?

Mr. SPECTER. I do.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, I say to my colleague from Pennsylvania, he has put this Senator in a difficult position, because I certainly do not disagree with his amendment and the substance of it. I do not know that there could be any other person in this body who would be more upset with Saddam Hussein's activities.

Last August, I was in Romania and I saw the results of Ceausescu's regime, and I came away from there thinking the people made a mistake in Romania in killing him. They should have kept him alive and tortured him, day after day, and made it a long, painful death.

I suggest Saddam Hussein is the same type of human being, if you can call either one of them human. It is evident to this Senator that he committed war crimes before this particular war ever started: The gassing of the Kurds and I think he is responsible for the deaths of some million people, both Iranians and Iraqis. So I hope there is some means of bringing this man to justice.

I also hope the Iraqi people will take care of the problem themselves.

Having said all of that, if this were a freestanding sense of the Senate, I would be here supporting it, because I do. However, Senator RIEGLE, the distinguished chairman of the Banking Committee, and I, felt that this was an emergency funding method for the RTC that must be passed as soon as possible. Therefore, along with the majority of the Senate Banking Committee on both sides of the aisle, we made a determination we would make every effort to keep it clean. In other words, to have no amendments of any sort on it so it could become law as rapidly as possible.

So my only problem is procedural. I wanted my friend and colleague to understand that, because we have talked other Senators out of offering amendments on both sides. We have moved to table each and every amendment, even some we were sympathetic to.

So in this case it is certainly nongermane to the issue of RTC funding, but a very important subject. I wanted my colleague to know there was no disagreement on the substance. As a matter of fact, I do not relish the thought of being put on record not voting for taking Saddam Hussein to some sort of trial or some punishment for what he has done.

I just want to make certain my colleague fully understands that, so when we do get to a vote on it, it has nothing to do with the substance of the amendment or what he is attempting to do, but procedurally I am trying to keep this bill clean and pass it as soon as possible so RTC has the necessary funding to stop this $7 million to $8 million a day of loss to the taxpayers.

If there is any time between today and tomorrow we can figure out any way to separate this and have a freestanding resolution, I certainly will support it.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank my distinguished colleague from Utah for those remarks. I can understand why my distinguished colleague from Utah might feel constrained to vote against this

resolution in the form of a tabling motion. I do not know that his constituents in Utah, however, would be as understanding as this Senator as to why he would vote against this resolution.

But in the course of the open house town meetings and his contacts with his constituents, which he has regularly—because he spends, I know, as much time as he can in Utah—if the procedure should compel that vote, he will have an opportunity to comment, probably taking somewhat longer by way of explanation than he has taken to convey to me an understanding as to why he would vote against this resolution.

But it is my hope that we can structure a procedure so the vote will occur at the very end, and not be a precedent. Although I think our 97 colleagues, aside from Senator RIEGLE, Senator GARN, and myself, would understand why this amendment would stand on a somewhat different footing from the manager's customary approach to table all amendments and not set a precedent where one emerges victorious.

I have cooperated with my colleague from Utah in trying to expedite the handling of this measure. I have voted to table amendments of great merit, even one offered by the distinguished Presiding Officer earlier today, in the interest of moving ahead and stopping the hemorrhaging of the savings and loan industry.

But this amendment, I think, has a particular importance at this time: That an early statement be made by the Senate, and also in conjunction with a trip which our Secretary of State is undertaking.

Mr. GARN. Will the Senator yield for a further unanimous-consent agreement to clarify what we had already agreed to with the distinguished chairman of the Banking Committee verbally?

Mr. SPECTER. I do.

Mr. GARN. Mr. President, I ask unanimous consent that once all time has been used or yielded back on the Specter amendment, No. 27, the amendment be laid aside until all other amendments to the bill are disposed of, and that no call for the regular order serve to bring the amendment back except one made by the managers of the bill or their designees.

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

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. 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. SPECTER. 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. SPECTER. Mr. President, in response to my distinguished colleague from Utah, I had commented about a number of points that he made. I think it important to comment on another point. When the distinguished Senator from Utah talked about President Ceausescu of Romania, and the abhorrent conduct of that administration in a dictatorial fashion and talked about torture by Ceausescu, I can understand his articulation of that kind of treatment.

But I think it is important to say that, if you have a court functioning, that torture cannot be a judgment of a court or the judgment of a civilized society, that however reprehensible the conduct of President Ceausescu may be or how reprehensible the conduct of any individual may be, at least in the judgment of this Senator, after having been involved in the criminal justice system substantially, it would be inappropriate really to think about torture even, on a visceral reaction, that might appear to be a just and appropriate course.

We talk with frequency about the death penalty, and that penalty raises conscientious scruples among many who oppose it, although they are very much opposed to the violent acts of murder which call for the death penalty in 37 of the 50 States of the United States of America. But I think it is important to note just in passing that when there is any discussion of torture that it is visceral only and not something which would be countenanced in any court of law.

I thank the Chair and yield the floor.

Mr. MCCONNELL. addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky. The Chair informs the Senator we are discussing an amendment under controlled time. Who yields time?

Mr. SPECTER. Mr. President, how much time remains?

The PRESIDING OFFICER. Two minutes, 27 seconds.

Mr. SPECTER. I yield 2 minutes and 27 seconds to my distinguished colleague from Kentucky.

Mr. MCCONNELL. I thank my friend from Pennsylvania.

Mr. President, now that the fighting is over, the stark consequences of Saddam Hussein's invasion of Kuwait are emerging. The environmental devastation, property damage, and deaths of untold numbers of civilians combine with harrowing reports of torture, abuse, rape, robbery, and the wholesale plundering of Kuwait's economic livelihood.

I do not think any Member of this body doubts that Saddam Hussein and his leadership should be held accountable for the crimes they have committed against the citizens of the region. Justice must be brought to bear against Hussein just as surely as the coalition brought military force to bear.

Iraq is a contracting party to the Geneva Conventions which detail humanitarian standards for treatment of civilians and prisoners of war. There is no doubt Iraq's leadership blatantly violated those conventions.

The question before the Senate is how to best enforce those conventions, for it is in enforcing the standards of the conventions that we build and assure the new world order we all seek—one based on the laws of men, not the will of one man.

Several weeks ago I introduced legislation which directs the President to collect information on the treatment of civilians and prisoners of war and at the appropriate time seek the U.N. Security Council's support in establishing an international criminal court to try violations of the Geneva Conventions. I believe that time has come.

Although Senator SPECTER's sense-of-the-Senate resolution tracks the principles and point of my legislation there are two key differences—it is nonbinding and preempts the possibility of trying individuals in American courts, if that is deemed appropriate by the President. Nonetheless, I think the Senator from Pennsylvania is making a constructive effort to put the Senate on record in support of enforcing international law and the Geneva Conventions.

We are a nation bound together by our laws. The President forged and led an international coalition authorized by the United Nations to use force to uphold international laws which embrace the principles of humane treatment of civilians and POW's.

We came together as an international community in initiating the use of force; we must now join together in establishing an international criminal court to reach a final legal judgment on crimes committed during Iraq's brutal occupation of Kuwait.

It is in reaching a legal judgment in an international criminal court that we will lay the foundation for a permanent, new world order based on international law, not ruthless men.

Mr. President, I commend the Senator from Pennsylvania for his amendment, and I hope that at some subsequent time we can go even further. I yield the floor.

The PRESIDING OFFICER. All time is expired for the proponents of the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, I am about to ask unanimous consent to submit a modification of the pending amendment, but I would first like to state briefly the modifications which are suggested.

One is that instead of "findings," there is language "The Congress finds that," which is substantively the same. The second is making it a sense of the Congress resolution. And the third is somewhat more expansive. In response to a suggestion by the distinguished Senator from Rhode Island, we would seek to add the following language: "The Congress further finds that any Iraqi use of chemical weapons against insurgents inside Iraq should be considered a war crime and that those responsible should be held accountable.

"Be it further resolved that in the event Iraq shall use chemical weapons, it is the sense-of-the-Senate"—it should be "Congress that the President should seek prompt and effective United Nations Security Council action to stop such use and punish those responsible."

So that this would have a beneficial effect, should chemical weapons be used in the insurgency, to put Saddam Hussein and Iraq on notice that this would come within the concept of war crimes.

So with that statement of purpose, I would ask unanimous consent that the modification be submitted.

The PRESIDING OFFICER. Without objection, the modification is accepted. Will the Senator send the modification to the desk.

Mr. SPECTER. Yes, I send the modification to the desk.

The amendment, as modified, is as follows:

SEC. .

(a) The Congress finds that—

The International Military Tribunal at Nuremberg held the initiation of a war of aggression to be "not only an international crime (but also) the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole;"

On August 2, 1990, and without provocation, Iraq initiated a war of aggression against the sovereign state of Kuwait;

The Charter of the United Nations imposes on its members the obligations to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" and to "settle their international disputes by peaceful means;"

The leaders of the Government of Iraq, a country which is a member of the United Nations, did violate this provision of the United Nations Charter;

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) imposes certain obligations upon a belligerent State, occupying another country by force of arms, in order to protect the civilian population of the occupied territory from some of the ravages of the conflict;

The public testimony of victims and witnesses has indicated that Iraqi officials violated Article 27 of the Fourth Geneva Convention by their inhumane treatment and acts of violence against the Kuwaiti civilian populations, including women;

The public testimony of victims and witnesses has indicated the Iraqi officials violated Articles 31 and 32 of the Fourth Geneva Convention by subjecting Kuwaiti civilians to physical coercion, suffering and extermination in order to obtain information;

Article 146 of the Fourth Geneva Convention states that persons committing "grave breaches" are to be apprehended and subjected to trial;

"Grave breaches" are defined to include: "willful killing, torture or inhuman treatment * * *, willfully causing great suffering or serious injury to body or health, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity;"

Both Iraq and Kuwait are parties to the Fourth Geneva Convention;

On several occasions the United Nations Security Council has found Iraq's treatment of Kuwaiti civilians violative of international law;

In Resolution 665, adopted on August 25, 1990, the United Nations Security Council deplored "the loss of innocent life stemming from the Iraqi invasion of Kuwait;"

In Resolution 670, adopted by the United Nations Security Council on September 25, 1990, it condemned further "the treatment by Iraqi forces on Kuwaiti nationals and reaffirmed that the Fourth Geneva Convention applied to Kuwaiti;"

In Resolution 674, the United Nations Security Council demanded that Iraq cease mistreating and oppressing Kuwaiti nations in violation of the Convention and reminded Iraq that it would be liable for any damage or injury suffered by Kuwaiti nationals due to Iraq's invasion and illegal occupation;

The Geneva Convention Relative to the Treatment of Prisoners of War (the Third Geneva or POW Convention) sets forth standards for the treatment of civilians and incapacitated combatants during times of hostilities;

Iraq is a party to the POW Convention;

There is evidence and testimony that Iraq violated articles of the POW Convention by its physical and psychological abuse of military and civilian POW's including members of the international press;

There is evidence and testimony that Iraq violated articles of the POW Convention by placing POW's in solitary confinement, failing to shelter POWs against air bombardment and denying POWs contact with the outside world;

In Resolution 667, adopted on September 16, 1990, the Security Council expressed "outrage" at Iraq's abduction of several persons from diplomatic premises in violation of the Vienna Conventions on Diplomatic and Consular Relations;

In violation of the Fourth Geneva Convention, Iraq did fire missiles on Israel with the intent of making it a party to war and with the intent of killing or injuring innocent civilians;

Iraq has inflicted grave risk to the health and well-being of innocent civilians in the region by its willful setting on fire of Kuwaiti oil wells and its willful spilling of oil into the Persian Gulf, resulting in the mass pollution of air and water;

For all of the above incidents, it is not a defense that an individual in committing such heinous acts acted under orders of higher government officials (International Military Tribunal (Nuremberg) Judgment and Sentences, 41 A.J.I.L. 172 (1946)) ("That a soldier was ordered to kill or torture in violation of international law of war has never been recognized as a defense to such acts of brutality.");

The Nuremburg tribunal provision which held that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" is as valid today as it was in 1946;

A failure to try and punish leaders and other persons for crimes against international law establishes a dangerous precedent and negatively impacts the value of deterrence to future illegal acts.

(b) It is the Sense of the Congress that the President should confer with Kuwait, other Member Nations of the Coalition or the United Nations to establish an International Criminal Court or an International Military Tribunal to try and punish all individuals involved in the planning or execution of the above referenced crimes, including Saddam Hussein.

(c) The Congress further finds that any Iraqi use of chemical weapons against insurgents inside Iraq should be considered a war crime and that those responsible should be held accountable.

(d) In the event Iraq shall use chemical weapons, it is the further sense of the Congress that the President should seek prompt and effective United Nations Security Council action to stop such use and to punish those responsible.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

INVENTORYING AND DISPOSITION OF ENVIRONMENTAL IMPORTANT LANDS HELD BY RTC

Mr. WIRTH. Mr. President, in the near future, along with my colleagues, Senator AKAKA and Senator KASTEN, I plan to reintroduce legislation to improve the process the Resolution Trust Corporation [RTC] employs to dispose of environmentally important and sensitive lands.

As Senator AKAKA and many of my colleagues know, I included a provision in FIRREA to help encourage the sale of environmentally valuable property to appropriate governmental agencies and conservation groups. I believe an important market exists for these properties and we should make every effort to develop this market.

However, I have been disappointed with the RTC's overall efforts in this area. I was particularly troubled by the recent decision of the RTC Oversight Board not to enter into a memorandum of understanding with the Fish and Wildlife Service regarding the identification of these important properties.

For these and other reasons, I believe new procedures are needed to guide the disposition of environmentally significant property by the RTC. Under the

legislation I am proposing, the Department of the Interior would be assigned the task of identifying properties with significant natural, cultural, recreational, or scientific value. Interior Department officials are better suited to perform this task than the RTC and this change would eliminate the need for the RTC to develop its own expertise, allowing the RTC to focus on its primary responsibilities.

In addition, under my proposal, the Secretary of the Interior could direct the RTC to transfer specific properties with significant natural value to Federal or State agencies. Finally, the RTC would also be required to provide public agencies and nonprofit conservation groups with a limited opportunity to purchase environmentally valuable property before it can be offered to other purchasers.

Mr. AKAKA. I thank the distinguished Senator from Colorado for his leadership on this matter. I know personally of his commitment to matters of conservation and preservation of the environment, as a result of our service together on the Energy and Natural Resources Committee.

It is because of his active interest in this matter that FIRREA contains the requirement that RTC identify environmentally important properties in its inventory. And, it is because of his recognition of the problem that he introduced legislation during the last Congress to improve the handling of environmentally important lands in RTC's inventory.

I am pleased to be associated with the legislation described by Senator WIRTH. Earlier this month, I introduced the Resolution Trust Corporation Asset Disposition Act (S. 385), which was also introduced in the House of Representatives by Representative PETER KOSTMAYER. I have also been working closely with Senator KASTEN on the RTC Asset Disposition Act to develop strong, workable legislation that protects these unique areas.

The bill I plan to introduce with Senator WIRTH is more comprehensive than the bill I introduced earlier in the session and I am proud to support the new legislation.

Mr. KASTEN. I want to commend Senators AKAKA and WIRTH on their efforts to promote the conservation of areas with unique environmental values.

It is important that we act as soon as we can to adopt such a provision. There are real costs to the environment of delaying action on this initiative.

The properties in question have already in effect been purchased by the Federal Government. I believe it is imperative that we maximize the value the public gets for those properties. Clearly, protecting high-value environmental, natural, and cultural sites promote those interests.

It is my hope the legislation we finally adopt also includes two innovations from the 1990 farm bill. Those two innovations are the concepts of conservation easements and compatible economic use. We have already applied these two concepts to farm lands in the Nation. I believe we should apply these principles to RTC inventories as well.

Easements and compatible economic uses protect the very values we seek to protect and allow use of the properties.

I look forward to working with my colleagues in adopting and implementing this important conservation initiative.

Mr. AKAKA. I want to thank the chairman of the Banking Committee for the leadership he has shown in managing the Resolution Trust Corporation Funding Act of 1991 on the Senate floor. It is my understanding that the environmental legislation we are discussing will not be offered as an amendment to the RTC funding bill in order to give the Banking Committee the opportunity to hold hearings on the RTC this spring and to consider the issues raised by this environmental legislation.

Mr. WIRTH. I share my colleague's regard for Senator RIEGLE and want to commend the chairman of the Banking Committee for his leadership in the committee in bringing this bill, which is not popular, through the committee in an expedited manner.

The Senator is correct that this legislation will not be offered as an amendment to the RTC funding bill. It is my hope that the Banking Committee will examine the RTC's efforts with respect to environmentally sensitive properties and consider this legislation as part of the broader financial reform legislation the committee plans to undertake this spring.

Mr. RIEGLE. I appreciate the effort Senators WIRTH, AKAKA, and KASTEN have put into this issue. As Chairman of the Senate Banking Committee, I know my colleague from Colorado has taken a leadership role to improve RTC's disposition of environmentally important lands. I also appreciate my colleague from Hawaii's active interest in the matters regarding the thrift crisis. As well, I appreciate the work and suggestions of my colleague from Wisconsin.

I can assure my colleagues that the issues raised in their legislation will be reviewed by the Banking Committee as part of the committee's oversight hearings on the RTC this spring.

Mr. WIRTH. Mr. President, the legislation would abolish the Resolution Trust Corporation [RTC] Oversight Board. The separate RTC Board of Directors would be expended by adding four full-time independent members appointed by the President and confirmed by the Senate. The President would name one of the independent members as the Chairman of the new consolidated RTC Board.

SALSA transfers to the Secretary of the Treasury the authority that the RTC Oversight Board presently has over the Resolution Funding Corporation, the entity which issues the bonds that finance the RTC. The Secretary would review the RTC's operating plan and approve the RTC's budget.

The proposal includes a provision related to the disposition of environmentally significant property acquired by the RTC. The Department of the Interior would be responsible for the identification of RTC properties with significant natural, cultural, recreational, or scientific value. In addition, the Secretary of the Interior can direct the Corporation to transfer property of significant natural value to Federal or State agencies. Finally, the RTC would be required to provide public agencies and nonprofit conservation groups with an opportunity to purchase the property before it can be offered to other purchasers.

SALSA would further restrict the RTC's ability to borrow so-called working capital. Currently, the RTC can borrow up to 85 percent of the value of the assets it holds, available cash, and any borrowing authority not yet used by the Resolution Funding Corporation. The legislation would reduce this limit to 75 percent.

The legislation also prohibits the RTC Board from holding closed meetings except to discuss individual transactions.

OTHER S&L-RELATED REFORMS

The legislation would abolish the Federal Housing Finance Board [FHFB]. The responsibilities of the Housing Finance Board would be shifted to the Federal Reserve Board with the exception of the Affordable Housing Program established by FIRREA. The program would be administered by the Department of Housing and Urban Development.

The proposal would abolish the Office of Thrift Supervision [OTS] and transfer supervisory authority over savings and loan associations to the Office of the Comptroller of the Currency and the Federal Reserve. The section would take effect in August 1992.

SALSA would also restructure the Board of Directors of the Federal Deposit Insurance Corporation [FDIC]. The Director of OTS would no longer serve on the Board and the Comptroller of the Currency would become a nonvoting member. There would be three voting members appointed by the President, one of whom would serve as Chairman.

The proposal would make the Office of the Comptroller of the Currency an independent agency rather than a part of the Department of the Treasury.

Finally, SALSA would reduce the number of Federal Home Loan Banks from the current 12 to no more than 5.

MORNING BUSINESS

Mr. RIEGLE. 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.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCARTHAN, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

SUCCESS OF OPERATION DESERT STORM—MESSAGE FROM THE PRESIDENT—PM 24

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was ordered to lie on the table:

Mr. President, Mr. Speaker, Members of Congress, five short weeks ago, I came to this House to speak to you about the State of the Union. We met then in time of war. Tonight, we meet in a world blessed by the promise of peace.

From the moment Operation Desert Storm commenced on January 16, until the time the guns fell silent at midnight one week ago, this Nation has watched its sons and daughters with pride—watched over them with prayer. As Commander in Chief, I can report to you: Our Armed Forces fought with honor and valor. As President, I can report to the Nation—aggression is defeated. The war is over.

This is a victory for every country in the coalition, and for the United Nations. A victory for unprecedented international cooperation and diplomacy, so well led by our Secretary of State James Baker. It is a victory for the rule of law and for what is right.

Desert Storm's success belongs to the team that so ably leads our Armed Forces—our Secretary of Defense and our Chairman of the Joint Chiefs, Dick Cheney and Colin Powell.

And of course, this military victory also belongs to the one the British call the "Man of the Match"—the tower of calm at the eye of Desert Storm—General Norman Schwarzkopf.

And let us not forget Saudi General Khalid, or Britain's General de la Billiere, or General Roquejoffre of France, and all the others whose leadership played such a vital role. And most importantly, all those who served in the field.

I thank the members of this Congress—support here for our troops in battle was overwhelming. And above all, I thank those whose unfailing love and support sustained our courageous men and women: I thank the American people.

Tonight, I come to this House to speak about the world—the world after war.

The recent challenge could not have been clearer. Saddam Hussein was the villain; Kuwait the victim. To the aid of this small country came nations from North America and Europe, from Asia and South America, from Africa and the Arab world—all united against aggression.

Our uncommon coalition must now work in common purpose to forge a future that should never again be held hostage to the darker side of human nature.

Tonight in Iraq, Saddam walks amidst ruin. His war machine is crushed. His ability to theaten mass destruction is itself destroyed. His people have been lied to—denied the truth. And when his defeated legions come home, all Iraqis will see and feel the havoc he has wrought. And this I promise you: For all that Saddam has done to his own people, to the Kuwaitis, and to the entire world—Saddam and those around him are accountable.

All of us grieve for the victims of war, for the people of Kuwait, and the suffering that scars the soul of that proud nation. We grieve for all our fallen soldiers and their families, for all the innocents caught up in this conflict. And yes, we grieve for the people of Iraq—a people who have never been our enemy. My hope is that one day we will once again welcome them as friends into the community of nations.

Our commitment to peace in the Middle East does not end with the liberation of Kuwait. So tonight, let me outline four key challenges to be met:

First, we must work together to create shared security arrangements in the region. Our friends and allies in the Middle East recognize that they will bear the bulk of the responsibility for regional security. But we want them to know that just as we stood with them to repel aggression so now America stands ready to work with them to secure the peace.

This does not mean stationing U.S. ground forces on the Arabian Peninsula, but it does mean American participation in joint exercises involving both air and ground forces. And it means maintaining a capable U.S. naval presence in the region, just as we have for over 40 years. Let it be clear: Our vital national interests depend on a stable and secure gulf.

Second, we must act to control the proliferation of weapons of mass destruction and the missiles used to deliver them. It would be tragic if the nations of the Middle East and Persian Gulf were now, in the wake of war, to embark on a new arms race. Iraq requires special vigilance. Until Iraq convinces the world of its peaceful intentions—that its leaders will not use new revenues to rearm and rebuild its menacing war machine—Iraq must not have access to the instruments of war.

Third, we must work to create new opportunities for peace and stability in the Middle East. On the night I announced Operation Desert Storm, I expressed my hope that out of the horrors of war might come new momentum for peace. We have learned in the modern age, geography cannot guarantee security and security does not come from military power alone.

All of us know the depth of bitterness that has made the dispute between Israel and its neighbors so painful and intractable. Yet, in the conflict just concluded, Israel and many of the Arab States have for the first time found themselves confronting the same aggressor. By now, it should be plain to all parties that peacemaking in the Middle East requires compromise. At the same time, peace brings real benefits to everyone. We must do all that we can to close the gap between Israel and the Arab states—and between Israelis and Palestinians. The tactics of terror lead nowhere—there can be no substitute for diplomacy.

A comprehensive peace must be grounded in United Nations Security Council Resolutions 242 and 338 and the principle of territory for peace. This principle must be elaborated to provide for Israel's security and recognition, and at the same time for legitimate Palestinian political rights. Anything else would fail the twin tests of fairness and security. The time has come to put an end to Arab-Israeli conflict.

The war with Iraq is over. The quest for solutions to the problems in Lebanon, in the Arab-Israeli dispute, and in the gulf must go forward with new vigor and determination. I guarantee you: No one will work harder for a stable peace in the region than we will.

Fourth, we must foster economic development for the sake of peace and progress. The Persian Gulf and Middle East form a region rich in natural resources with a wealth of untapped human potential. Resources once squandered on military might must be redirected to more peaceful ends. We are already addressing the immediate economic consequences of Iraq's aggression. Now, the challenge is to reach higher—to foster economic freedom and prosperity for all people of the region.

By meeting these four challenges we can build a framework for peace. I have asked Secretary of State Baker to go

to the Middle East to begin this process. He will go to listen, to probe, to offer suggestions, and to advance the search for peace and stability. I have also asked him to raise the plight of the hostages held in Lebanon. We have not forgotten them. We will not forget them.

To all the challenges that confront this region of the world, there is no single solution, no solely American answer. But we can make a difference. America will work tirelessly as a catalyst for positive change.

But we cannot lead a new world abroad if, at home, it's politics as usual on American defense and diplomacy. It's time to turn away from the temptation to protect unneeded weapons systems and obsolete bases. It's time to put an end to micromanagement of foreign and security assistance programs, micromanagement that humiliates our friends and allies and hamstrings our diplomacy. It's time to rise above the parochial and the pork barrel—to do what is necessary, what's right, and what will enable this Nation to play the leadership role required of us.

The consequences of the conflict in the gulf reach far beyond the confines of the Middle East. Twice before in this century, an entire world was convulsed by war. Twice this century, out of the horrors of war hope emerged for enduring peace. Twice before, those hopes proved to be a distant dream, beyond the grasp of man.

Until now, the world we've known has been a world divided—a world of barbed wire and concrete block, conflict and Cold War.

Now, we can see a new world coming into view. A world in which there is the very real prospect of a new world order. In the words of Winston Churchill, a "world order" in which "the principles of justice and fair play * * * protect the weak against the strong. * * *" A world where the United Nations, freed from cold war stalemate, is poised to fulfill the historic vision of its founders. A world in which freedom and respect for human rights find a home among all nations.

The gulf war put this new world to its first test. And my fellow Americans: We passed that test.

For the sake of our principles—for the sake of the Kuwaiti people—we stood our ground. Because the world would not look the other way, Ambassador Al-Sabah, tonight, Kuwait is free.

Tonight, as our troops begin to come home, let us recognize that the hard work of freedom still calls us forward. We've learned the hard lessons of history. The victory over Iraq was not waged as a war to end all wars. Even the new world order cannot guarantee an era of perpetual peace. But enduring peace must be our mission.

Our success in the gulf will shape not only the new world order we seek but our mission here at home.

In the war just ended, there were clear-cut objectives, timetables and, above all, an overriding imperative to achieve results. We must bring that same sense of self-discipline, that same sense of urgency, to the way we meet challenges here at home.

In my State of the Union address and in my budget, I defined a comprehensive agenda to prepare for the next American century.

Our first priority is to get this economy rolling again. The fear and uncertainty caused by the crisis in the gulf were understandable. But now that the war is over, oil prices are down, interest rates are down, and confidence is rightly coming back. Americans can move forward to lend, spend and invest in this, the strongest economy on Earth.

We must also enact the legislation that is key to building a better America. For example: In 1990, we enacted an historic Clean Air Act. Now we've proposed a National Energy Strategy. We passed a Child Care bill that put power in the hands of parents. Today, we're ready to do the same thing with our schools, and expand choice in education. We passed a Crime bill that made a useful start in fighting crime and drugs. This year we're sending to Congress our comprehensive crime package to finish the job. We passed the landmark Americans With Disabilities Act. Now we've sent forward our Civil Rights bill. We also passed the Aviation bill. This year we've sent up our new Highway bill.

And these are just a few of our pending proposals for reform and renewal.

Tonight, I call on Congress to move forward aggressively on our domestic front. Let's begin with two initiatives we should be able to agree on quickly: Transportation and crime. And then, let's build on success with those and enact the rest of our agenda. If our forces could win the ground war in 100 hours, then surely the Congress can pass this legislation in 100 days. Let that be a promise we make tonight to the American people.

When I spoke in this House about the state of our Union, I asked all of you: If we can selflessly confront evil for the sake of good in a land so far away, then surely we can make this land all that it should be. In the time since then, the brave men and women of Desert Storm accomplished more than even they may realize. They set out to confront an enemy abroad, and in the process, they transformed a nation at home.

Think of the way they went about their mission—with confidence and quiet pride. Think about their sense of duty, about all they taught us, about our values, about ourselves.

We hear so often about our young people in turmoil; how our children fall short; how our schools fail us; how American products and American workers are second class. Well, don't you believe it. The America we saw in Desert Storm was first-class talent.

And they did it using America's state-of-the-art technology. We saw the excellence embodied in the Patriot missile and the patriots who made it work.

And we saw soldiers who know about honor and bravery and duty and country and the world-shaking power of these simple words.

There is something noble and majestic about the pride, about the patriotism, that we feel tonight.

So, to everyone here, and everyone watching at home, think about the men and women of Desert Storm. Let us honor them with our gratitude. Let us comfort the families of the fallen and remember each precious life lost.

Let us learn from them as well. Let us honor those who have served us by serving others.

Let us honor them as individuals—men and women of every race, all creeds, and colors—by setting the face of this Nation against discrimination, bigotry, and hate.

I'm sure many of you saw on television the unforgettable scene of four terrified Iraqi soldiers surrendering. They emerged from their bunker—broken, tears streaming from their eyes, fearing the worst. And then there was the American soldier. Remember what he said? He said: "It's okay. You're all right now. You're all right now."

That scene says a lot about America, a lot about who we are. Americans are a caring people. We are a good people, a generous people. Let us always be caring and good and generous in all we do.

Soon, our troops will begin the march we've all been waiting for—their march home. I have directed Secretary Cheney to begin the immediate return of American combat units from the gulf.

Less than two hours from now, the first planeload of American soldiers will lift off from Saudi Arabia headed for the U.S.A. It will carry men and women of the 24th Mechanized Infantry Division bound for Fort Stewart, GA. This is just the beginning of a steady flow of American troops coming home.

Let their return remind us that all those who have gone before are linked with us in the long line of freedom's march. Americans have always tried to serve, to sacrifice nobly for what we believe to be right.

Tonight, I ask every community in this country to make this coming 4th of July a day of special celebration for our returning troops. They may have missed Thanksgiving and Christmas, but I can tell you this: For them and for their families, we can make this a holiday they'll never forget.

In a very real sense, this victory belongs to them—to the privates and the pilots, to the sergeants and the supply officers, to the men and women in the machines, and the men and women who made them work. It belongs to the regulars, to the Reserves, to the Guard. This victory belongs to the finest fighting force this Nation has ever known.

We went halfway around the world to do what is moral and just and right. We fought hard, and—with others—we won the war. We lifted the yoke of aggression and tyranny from a small country that many Americans had never even heard of, and we ask nothing in return.

We're coming home now—proud. Confident—heads high. There is much that we must do at home and abroad. And we will do it. We are Americans.

May God bless this great nation—the United States of America.

MESSAGES FROM THE HOUSE

At 1:55 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate.

H.J. Res. 104. Joint resolution to designate March 26, 1991, as "Education Day, U.S.A.";

H.J. Res. 133. Joint resolution authorizing and requesting the President to designate the second full week in March 1991 as "National Employ the Older Worker Week"; and

H.J. Res. 167. Joint resolution designating June 14, 1991, and June 14, 1992, each as "Baltic Freedom Day".

ENROLLED JOINT RESOLUTION SIGNED

A message from the House of Representatives announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 84. Joint resolution disapproving the action of the District of Columbia Council in approving the Schedule of Heights Amendments Act of 1990.

The enrolled joint resolution was subsequently signed by the Vice President.

MEASURES REFERRED

The following joint resolution was read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 133. Joint resolution authorizing and requesting the President to designate the second full week in March 1991 as "National Employ the Older Worker Week"; 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. 1176. An act to provide authorizations for supplemental appropriations for fiscal year 1991 for the Department of State and the Agency for International Development for certain emergency costs associated with the Persian Gulf conflict, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services, without amendment:

S. 578. An original bill to authorize supplemental appropriations for fiscal year 1991 for the Department of Defense for Operation Desert Storm, to provide military personnel benefits for persons serving during Operation Desert Storm, and for other purposes (Rept. No. 102-18).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry:

Edward R. Madigan, of Illinois, to be Secretary of Agriculture.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's 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. NICKLES (for himself, Mr. GRASSLEY, Mr. THURMOND, Mr. MCCAIN, and Mr. STEVENS):

S. 566. A bill to provide restitution to crime victims; to the Committee on the Judiciary.

By Mr. SANFORD (for himself, Mr. LUGAR, Mr. HARKIN, Mr. GRASSLEY, Mr. REID, Mr. FORD, Mr. DASCHLE, Mr. SHELBY, Mr. PRESSLER, Mr. PELL, Mr. BURNS, Mr. KASTEN, Mr. CHAFEE, Mr. BRYAN, Mr. HOLLINGS, Mr. DECONCINI, Mr. EXON, Mr. HATFIELD, Mr. AKAKA, and Ms. MIKULSKI):

S. 567. A bill to amend title II of the Social Security Act to provide for a gradual period of transition (under a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as such changes apply to workers born in years after 1916 and before 1927 (and related beneficiaries) and to provide for increases in such workers' benefits accordingly, and for other purposes; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 568. A bill to require that imports of fresh papaya meet all the requirements imposed on domestic fresh papaya; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HELMS:

S. 569. A bill to temporarily suspend the duty on N=[[(4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide; to the Committee on Finance.

By Mr. JOHNSTON (for himself and Mr. WALLOP) (by request):

S. 570. A bill to implement a National Energy Strategy, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BOREN (for himself, Mr. BENTSEN, Mr. BYRD, and Mr. BAUCUS):

S. 571. A bill to amend the Export-Import Bank Act of 1945 and the Foreign Assistance Act of 1961 to reform United States bilateral economic assistance programs, to promote the purchase of United States goods and services, to promote democracy and privatization in Eastern Europe, and for other purposes; to the Committee on Foreign Relations.

By Mr. WIRTH:

S. 572. A bill to amend the Federal Home Loan Bank Act, the Home Owners' Loan Act, and other Acts to restructure the Resolution Trust Corporation and dissolve the Oversight Board, to merge the Office of Thrift Supervision into an independent Office of the Comptroller of the Currency, and to dissolve the Federal Housing Finance Board; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CRANSTON (for himself and Mr. MOYNIHAN):

S. 573. A bill to amend the Foreign Assistance Act of 1961 to condition the availability of security assistance for a foreign country on that country's compliance with fundamental guarantees of international humanitarian law applicable in situations of armed conflict, and for other purposes; to the Committee on Foreign Relations.

By Mr. CRANSTON (for himself, Mr. KERRY, Mr. KENNEDY, Mr. MOYNIHAN, Mr. INOUYE, Mr. PELL, Mr. CHAFEE, Mr. SIMON, and Mr. AKAKA):

S. 574. A bill to amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself, Mr. CHAFEE, Mr. MITCHELL, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. BRADLEY, Mr. AKAKA, Mr. INOUYE, Mr. SHELBY, Mr. DASCHLE, Mr. KENNEDY, Mr. PELL, and Ms. MIKULSKI):

S. 575. A bill entitled "Radon Testing For Safe Schools Act"; to the Committee on Environment and Public Works.

By Mr. DECONCINI:

S. 576. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide on-site daycare facilities for dependents of their employees; to the Committee on Finance.

By Mr. KERRY:

S. 577. A bill to amend the Securities Exchange Act of 1934 to permit members of national securities exchanges to effect certain transactions with respect to accounts for which such members exercise investment discretion; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. NUNN, from the Committee on Armed Services:

S. 578. An original bill to authorize supplemental appropriations for fiscal year 1991 for the Department of Defense for Operation Desert Storm, to provide military personnel benefits for persons serving during Operation Desert Storm, and for other purposes; placed on the calendar.

By Mr. PELL (by request):

S. 579. A bill to authorize appropriations for the Department of State to carry out its

authorities and responsibilities in the conduct of foreign affairs during the fiscal years 1992 and 1993, and for other purposes; to the Committee on Foreign Relations.

By Mr. BENTSEN (for himself, Mr. SIMPSON, Mr. JOHNSTON, Mr. BOREN, Mr. BREAUX, Mr. COCHRAN, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. CRAIG, and Mr. WALLOP):

S. 580. A bill to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons; to the Committee on the Judiciary.

By Mr. BOREN (for himself, Mr. HEINZ, Mr. PRYOR, Mr. DANFORTH, Mr. BAUCUS, Mr. SYMMS, Mr. DASCHLE, Mr. MOYNIHAN, Mr. GRASSLEY, and Mr. RIEGLE):

S. 581. A bill to amend the Internal Revenue Code of 1986 to provide for a permanent extension of the targeted jobs credit, and for other purposes; to the Committee on Finance.

By Mr. BOREN (for himself and Mr. HEINZ):

S. 582. A bill to amend the Internal Revenue Code of 1986 to provide an incentive for private sector employees to hire and train Persian Gulf veterans, and for other purposes; to the Committee on Finance.

By Mr. ROTH:

S. 583. A bill to amend the Internal Revenue Code of 1986 to require the recapture of certain losses of savings and loan associations, to clarify the treatment of certain Federal financial assistance to savings and loan associations, and for other purposes; to the Committee on Finance.

By Mr. GORTON (for himself and Mr. ADAMS):

S. 584. A bill to clarify that certain greenhouses and nurseries that suffer damage as the result of severe storms or flooding in connection with a major disaster declared by the President on or after November 26, 1990, are eligible for loans under section 7 of the Small Business Act; to the Committee on Small Business.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HELMS:

S. Res. 74. A resolution to amend the Standing Rules of the Senate to prohibit any assistant to a Senator from soliciting campaign contributions; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself, Mr. GRASSLEY, Mr. THURMOND, Mr. MCCAIN, and Mr. STEVENS):

S. 566. A bill to provide restitution to crime victims; to the Committee on the Judiciary.

CRIME VICTIMS' RESTITUTION ACT

Mr. NICKLES. Mr. President, on Friday, February 15, the Supreme Court announced its intention to reconsider an issue of great importance to crime victims. After previously declining to rule on a case addressing the same issue, this is good news for those wanting to strengthen our statutes as they relate to victim rights and assistance.

The legislation I am introducing today with my colleagues, Senators GRASSLEY, THURMOND, MCCAIN, and STEVENS, ensures that victims of Federal crimes will receive restitution from their attacker.

During the 101st Congress, I introduced the Victim Rights and Restitution Act of 1990 as an amendment to the omnibus crime bill. I was encouraged by the overwhelming bipartisan support for my amendment and was pleased that the bill, as amended, was passed by the Senate. A companion measure was also passed by the House of Representatives. My legislation established statutory rights for victims of crime, mandated restitution orders in all Federal criminal cases, and prohibited the discharge of restitution orders under bankruptcy proceedings.

Unfortunately, the restitution provisions of the Victim Rights and Restitution Act were dropped in a last-minute conference. I believe very strongly that all crime victims deserve to be repaid for their losses. My bill requires the courts to order restitution in all criminal cases. Furthermore, the bill requires the restitution order to be for the full amount of the victim's losses. Once the order has been handed down, the court will order the method and timing of restitution payments, taking into account the financial circumstances and obligations of the offender.

This is a very tough provision. This bill is saying that if a criminal does $100,000 worth of damage to you, he's going to be liable for $100,000 in restitution. Some of my colleagues may be bothered by that provision. But what this bill does is ensure that criminals, in paying their debt to society, will also pay their debt to the innocent victims of their acts.

My bill also addresses a recent Supreme Court case concerning restitution orders. The Crime Victim's Restitution Act will permit courts to consider the entire course of an offender's criminal activity in determining restitution orders for victims of an offense other than the offense of conviction.

Once a sentence has been completed, if time has been served at all, criminals are free * * * they are given the opportunity to start over. Unfortunately, victims are not given that opportunity. For many, once they have been victimized, they remain victims for the rest of their lives. In some cases, they cannot simply move on with their lives. As a result of the crime committed against them, victims may be physically disabled, financially ruined, or emotionally scarred. They may have lost a child, a spouse, a parent. I believe it is important to ensure not only that victims will be compensated for their losses, but also that offenders be made to realize the extent of their crimes by being required to pay restitution directly to their victims through the court system.

Mr. President, this bill has the support of the National Organization for Victim Assistance, the National Victim Center, and Mothers Against Drunk Driving. I ask unanimous consent that their letters of support appear in the RECORD following my remarks.

Mr. President, I urge my colleagues to support this legislation to require criminal offenders to pay restitution to compensate victims for their losses. With more than 80 percent of U.S. citizens being victimized during their lifetimes, and a violent crime occurring every 20 seconds, we cannot afford to wait any longer. No legislation can completely stop victimization from occurring, but this legislation will help ensure that the trauma victims suffer will not continue in the courts.

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

NATIONAL ORGANIZATION FOR VICTIM ASSISTANCE,
Washington, DC, February 5, 1991.

Hon. DON NICKLES,
U.S. Senate,
Washington, DC.

DEAR SENATOR NICKLES: I write to commend you in behalf of the National Organization for Victim Assistance (NOVA) for your efforts to make full restitution a mandatory sanction facing every criminal offender sentenced in Federal courts.

As the oldest national organization in the worldwide victims' movement, NOVA wrestles with many difficult and contentious issues under the rubric of victim rights. This is not one of them. Not once have we heard a principled objection to the precept that confessed and convicted offenders should be held to pay for the damage they have caused their victims. How to put that just principle into practice is all that is left to decide.

For too long, our justice system has given crime victims only one option—to pursue their remedy in the civil courts, where, years after the criminal court has established the wrongdoer's liability, a civil court may give the more fortunate victims not only a judgment for their monetary losses but also enough by way of "pain and suffering" to break even after the attorneys' fees are paid. Luckier still are the victims whose offenders are then able to pay the judgment forthwith.

Given these realities, fair-minded people understand that in all but the rarest of cases, the victim's civil-court option is an illusion verging on a fraud. Thus, we have created a system that holds offenders accountable for their debts to society while being relieved of any debts owed their victims.

That is a systemic injustice your bill sets out to undo. It restores the ancient sanction of restitution to its rightful place in our criminal justice system. It provides realistic methods to assure that all Federal offenders are given a formal obligation to make repayments for all the economic harm they caused all their victims. And it gives the victims the same methods of collecting on the debt as are granted civil litigants.

These are all reasonable methods to put principle into practice, and both Houses of Congress voted their adoption in the last Congress. Yet your amendment and its

House counterpart were dropped from the final crime bill, so it is worth speculating about what some think is objectionable in your bill.

Some voices of "realism" may say that virtually all criminals are, and forever will be, impecunious deadbeats, and thus it is not worth anyone's bother to tote up their debts to their victims. That kind of "realism" would have us write off every criminal offender, despairing of any ever having the means or the desire to pay back his or her old debts.

We in the victims' movement need no lectures about the realities about those who commit crime. But here's a significant reality that we must live with: the vast majority of those convicted of crime become free citizens within a few months or years of their sentencing. Many of them—though surely not enough—do manage to rehabilitate themselves and begin to earn their way in society. To reach the ones who can repay what they owe, society must send a bill to all of them. Otherwise, realistically, all are off the hook.

Others may say that yours is a vindictive proposal, looking to impose unjust burdens on offenders under the threat of jailing those who cannot meet their restitution obligations. Our answer is the same as yours: until they are made whole, it is the victims, not their offenders, who bear the financial burdens of the crime; even when full restitution is paid, it does not even seek to compensate for the victims' pain and suffering; and no offender who is unable to meet his restitution payments is subject to any penalty—only those who willfully refuse to do so.

In fact, your bill puts an affirmative duty on the courts to scale back full restitution orders to conform with an offender's ability to pay—a subsidiary order that may be modified as the offender's circumstances change.

We have long advocated for the kind of restitutive justice that is now embodied in your bill. We commend you for putting this expression of simple justice back on the Congressional agenda—and, we trust, back on the Congressional Calendar. Please be assured of our support in the journey ahead.

Sincerely,

MARLENE A. YOUNG, Ph.D., J.D.,
Executive Director.

NATIONAL VICTIM CENTER,
Fort Worth, TX, February 6, 1991.

Hon. DON NICKLES,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR NICKLES: Thank you for providing the National Victim Center with the opportunity to review and comment on your proposed legislation entitled the "Crime Victims' Restitution Act of 1991."

The Board of Directors and the staff of the National Victim Center would like to lend our full support for this important legislation.

For the majority of crime victims who lack the necessary resources to bring a civil action, restitution orders provide their only hope of recovering directly from the offender any of the financial losses they have suffered as a result of the crime perpetrated against them.

Apart from serving the important function of helping victims recoup their financial losses, restitution payments are the only means within the cirmnal justice process whereby offenders are held directly accountable to their victims.

For many victims, the recognition of responsibility represented by such direct payments is more important than any financial benefits they derive from them. In fact, studies have shown that programs which hold the offender directly responsible to victims not only serve the interest of justice in the minds of victims, but also serve the interest of justice by actually reducing the recidivism rates of offenders.

Unfortunately, the Supreme Courts recent ruling in *Hughey v. United States* will have the effect of thwarting these basic interest of justice in a substantial number of cases by denying victims the right to restitution unless the specific offenses committed against them are charged and proven during trial.

A key provision of the "Crime Victims' Restitution Act of 1991", you have introduced, will restore the right of restitution for the thousands of crime victims nationwide who were disenfranchised by the *Hughey* decision. Other provisions of the bill will substantially augment and strengthen existing statutes that provide for restitution in criminal cases.

These provisions, imbodied in the "Crime Victims' Restitution Act of 1991" will enhance the quality of justice not only for crime victims specifically, but also for the criminal justice system as a whole.

We would like to express our appreciation for your efforts to introduce this important piece of legislation. It demonstrates the kind of national leadership that is an indispensable part of the struggle to achieve just and equitable treatment for crime victims in the United States.

The Board of Directors and staff of the National Victim Center urge your colleagues in the United States Senate to support this vital piece of legislation.

If we can be of any further assistance in support of this proposed bill please feel free to contact us again.

Thank you for your consideration.

Sincerely,

DAVID BEATTY,
Director, Public Policy.

MOTHERS AGAINST DRUNK DRIVING,
Dallas, TX, February 25, 1991.

Senator DON NICKLES,
Washington, D.C.

DEAR SENATOR NICKLES: MADD is happy to endorse your bill to provide restitution to crime victims. Adequate and timely restitution has always been in MADD's Victim Bill of Rights position paper and we applaud your bill for its thoroughness and specificity.

We have been involved in drafting a model Victims of Crime Act in conjunction with the National Conference of Commissioners on Uniform State Laws and we will be recommending sections of your bill to them for incorporation into that document.

Respectfully,

MICKY SADOFF,
President,
Mothers Against Drunk Driving.

By Mr. SANFORD (for himself, Mr. LUGAR, Mr. HARKIN, Mr. GRASSLEY, Mr. REID, Mr. FORD, Mr. DASCHLE, Mr. SHELBY, Mr. PRESSLER, Mr. PELL, Mr. BURNS, Mr. KASTEN, Mr. CHAFEE, Mr. BRYAN, Mr. HOLLINGS, Mr. DECONCINI, Mr. EXON, Mr. HATFIELD, Mr. AKAKA, and Ms. MIKULSKI):

S. 567. A bill to amend title II of the Social Security Act to provide for a more gradual period of transition—under a new alternative formula with respect to such transition—to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as such changes apply to workers born in years after 1916 and before 1927—and related beneficiaries—and to provide for increases in such workers' benefits accordingly, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY NOTCH ADJUSTMENT ACT

Mr. SANFORD. Mr. President, I am pleased to be joined by my distinguished colleagues, Senators LUGAR, HARKIN, GRASSLEY, REID, FORD, DASCHLE, SHELBY, PELL, PRESSLER, BURNS, HOLLINGS, EXON, KASTEN, CHAFEE, BRYAN, DECONCINI, HATFIELD, AKAKA, and MIKULSKI in introducing the Social Security Notch Adjustment Act of 1991.

The Social Security notch issue is about fairness. It is unfair to reduce someone's Social Security benefit solely because of the year in which he or she was born, but that is what we have done. Most retired people who were born between 1917 and 1926 are receiving lower benefits than those born before them, and they will receive lower benefits than those born after them until we pass legislation to correct this inequity. This inequity in benefit distribution created a pothole, a dip in the graphs, and the legislation I introduce today proposes to smooth over that pothole by filling it in with equity to ease the disparity that now exists.

This legislation is identical to a bill introduced last month by Representative ROYBAL which now has more than 150 cosponsors. This is consensus legislation in the House, and it is my hope that it will become the consensus legislation for the entire Congress. It reduces the current benefit inequities without creating another notch, by using a 10-year transition benefit formula. And it is affordable at an average annual cost of about four and a half billion dollars—less than 2 percent of annual benefits.

Mr. President, some of my colleagues claim that correcting the notch is an expansion of the Social Security Program. It is not. Correcting the notch is just that, correcting a problem that began in 1972. The legislation I am introducing today proposes to correct a mistake that Congress made nearly two decades ago. It is not time to correct that mistake, Mr. President. It is past time.

The notch victims in North Carolina and throughout the country, about 12 million in number, are stubborn. They will not give up. They are determined to continue their fight for fairness and so are many Members of Congress. We have an opportunity, during this Congress, to resolve this problem without repeating the mistakes which created the original notch. We can pass legislation to correct this inequity and end once and for all the long and frustrat-

ing debate for fairness that will otherwise surely continue for years to come.

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

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

S. 567

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 "Social Security Notch Adjustment Act of 1991".

SEC. 2. EXPANSION OF PERIOD OF TRANSITION; NEW ALTERNATIVE FORMULA WITH RESPECT TO SUCH PERIOD.

(a) EXPANSION OF PERIOD OF TRANSITION.—Section 215(a)(4)(B)(i) of the Social Security Act (42 U.S.C. 415(a)(4)(B)(i)) is amended by striking "1984" and inserting "1989".

(b) ESTABLISHMENT OF NEW TRANSITIONAL FORMULA.—Section 215(a) of such Act (42 U.S.C. 415(a)) is amended by adding at the end the following new paragraph:

"(8)(A) Paragraphs (1) (except for subparagraph (C)(i) thereof) and (4) do not apply to the computation or recomputation of a primary insurance amount for an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed under subparagraph (B).

"(B) The primary insurance amount computed or recomputed under this subparagraph is equal to the sum of the amount which would be computed under this subsection if this paragraph were not applied, plus the product (not less than zero) derived by multiplying—

"(i) the excess of the adjusted old-law benefit amount over the new-law benefit amount, by

"(ii) the applicable reduction factor.

"(C) For purposes of this paragraph, in the case of any individual described in subparagraph (A)—

"(i) The term 'adjusted old-law benefit amount' means the amount computed or recomputed under this subsection as in effect in December 1978 (for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits period to 1989) or subsection (d) (in the case of an individual to whom such subsection applies), subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990.

"(ii) The term 'new-law benefit amount' means the amount which would be computed under this subsection if this paragraph were not applied.

"(iii)(I) The term 'applicable reduction factor' means the excess of the applicable base percentage determined under subclause (II) over the applicable early retirement percentage determined under subclause (III).

"(II) The applicable base percentage determined under this subclause is the percentage provided in the following table:

"If the individual becomes eligible for old-age insurance benefits in:	The applicable base percentage is:
1979	40 percent
1980	37 percent
1981	34 percent
1982	31 percent
1983	25 percent
1984	20 percent
1985	15 percent
1986	10 percent
1987	5 percent
1988	5 percent

"(III) The applicable early retirement percentage determined under this subclause is the product derived by multiplying 5/12 of 1 percent by the total number of months, before the month in which the individual attains the age of 65, for which an old-age insurance benefit is payable to such individual.".

(c) APPLICABILITY OF OLD PROVISIONS.—Section 215(a)(5) of such Act (42 U.S.C. 415(a)(5)) is amended—

(1) in subparagraph (A), by striking "subject to subparagraphs (B), (C), (D), and (E)," and inserting "subject to subparagraphs (B), (C), (D), (E), and (F),"; and

(2) by adding at the end the following new subparagraph:

"(F) In applying this section as in effect in December 1978 as provided in subparagraph (A) in the case of an individual to whom paragraph (1) does not apply by reason of paragraph (8)—

"(i) subsection (b)(2)(C) shall be deemed to provide that an individual's 'computation base years' may include only calendar years in the period after 1950 (or 1936 if applicable) and ending with the calendar year in which such individual attains age 65; and

"(ii) the 'contribution and benefit base' (under section 230) with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1981 shall be deemed to be $29,700.".

(d) CONFORMING AMENDMENT.—Section 215(a)(3)(A) of such Act (42 U.S.C. 415(a)(3)(A)) is amended in the matter following clause (iii) by striking "(4)" and inserting "(4) or (8)".

SEC. 3. EFFECTIVE DATE AND RELATED RULES.

(a) IN GENERAL.—Except as provided in subsection (c), the amendments made by this Act shall be effective as if included in the amendments made by section 201 of the Social Security Amendments of 1977.

(b) RECOMPUTATION.—In any case in which an individual (under title II of the Social Security Act) is entitled, for the month in which this Act is enacted, to monthly insurance benefits under such title which were computed—

(1) under section 215 of the Social Security Act as in effect (by reason of the Social Security Amendments of 1977) after December 1978, or

(2) under section 215 of such Act as in effect prior to January 1979 (and subsequently amended and modified) by reason of subsection (a)(4)(B) of such section (as amended by the Social Security Amendments of 1977),

the Secretary of Health and Human Services (notwithstanding section 215(f)(1) of the Social Security Act) shall recompute such individual's primary insurance amount so as to take into account the amendments made by this section.

(c) PROSPECTIVE APPLICABILITY.—The amendments made by this Act shall apply only with respect to benefits for months after November 1991.

Mr. HARKIN. Mr. President, I am pleased to join my distinguished colleague from North Carolina, Senator TERRY SANFORD, and a bipartisan group of Senators in today introducing consensus legislation to once and for all correct the inequity in Social Security benefits known as the notch. Our bill builds on the progress we made last year when I along with Senator SANFORD and others were able to get this important issue debated on the floor of the Senate for the first time. At that time, procedural maneuverings on the underlying bill to which we were offering our notch correction amendment, thwarted our effort. I am hopeful that this bill, which brings together the best of a number of notch correction bills introduced last session, will help to finally push us over the top this Congress.

Mr. President, nearly 10 million Americans have been waiting some 14 years for a fair solution to the Social Security notch. As we eagerly await the return of our men and women who served with such distinction in the Persian Gulf and we work on legislation to assure that their efforts are appropriately recognized, we should remember that a great number of the older Americans we are trying to help with this bill were once in the same shoes. Many of the so-called notch babies are the men and women who fought for this country in World War II. Most are of very modest means and they cannot understand why the country they served so well is treating them unfairly. They deserve better and now is the time for us to assure that they get it.

Mr. President, finding a solution to the Social Security notch problem has been a priority of mine for over 7 years now. I have offered amendments, cosponsored and supported legislation, held hearings, testified at hearings and spoken out on many occasions. I hope that this Congress and this bill will finally bring justice to the millions of older Americans who are the victims of this inequity in our Social Security system. As in the past, it will be a difficult task. I know we will hear from many who will say that we cannot afford to do it. But all we are really asking for is fairness. And we can restore fairness, as this bill does, without breaking any bank or creating hardship on others. We can and we must.

Mr. President, I want to commend Senator SANFORD for the leadership he has provided on this important issue for a long time. All 10 million notch babies around the Nation are indebted to him for championing their cause.

In closing, I simply want to ask each of my colleagues to give this bill careful and fair consideration. If they do, I am confident that we will act positively on it this Congress.

Mr. President, I want to compliment the distinguished Senator from North Carolina for leading the charge against—and introducing this bill to correct—an unfair situation that affects so many of our elderly people in this country. I am proud to join him this year, as I did last year, in trying

to correct this so-called notch problem in a fair manner, a manner that is fair to everyone.

I want to compliment the distinguished Senator from North Carolina for being the leader on this issue in the entire Senate.

Mr. LUGAR. Mr. President, I again want to express my concern over the injustices created by the Social Security notch. I have, over the years, consistently supported legislation which would correct this error.

The notch was created in 1972 when Congress began, accidentally, double indexing Social Security benefits for inflation. If this error had not been corrected, the double indexing would eventually have bankrupted the Social Security trust fund. In 1977, Congress acted to correct this error. Instead of cutting the double indexed benefits of those receiving Social Security benefits, the Congress enacted what many of us view as a faulty transition formula for those who were reaching retirement age. The resulting inequity is exemplified by a $155/month discrepancy in the Social Security benefits received by two people, born a month apart, that have worked identical jobs at identical salaries.

This proposal, which I am pleased to cosponsor, calls for a transition formula with a longer period to phase in a fair and stable level of Social Security benefits for individuals born between 1917 and 1926. I believe this bill will correct the notch problem without jeopardizing the stability of the Social Security trust fund.

Mr. PRESSLER. Mr. President, in South Dakota, the average Social Security benefits reduction for notch retirees is $660 per year. In fact my mother is a "notch baby," having been born in 1918. Thus, I hear about this subject constantly.

Today I am joining Senators SANFORD, LUGAR, HARKIN, and GRASSLEY and others in sponsoring Social Security notch reform legislation. The Finance Committee should let this come to the Senate floor for a vote. I have supported many bills to correct the Social Security notch inequity. As a strong advocate of notch correction, I have been disappointed by the Finance Committee's recurrent failure to move this legislation. I have contacted the committee, urging them to take action on this key issue, but no progress has been made. Last October, we fell just six votes short of waiving the Budget Act to allow consideration of an amendment to correct the Social Security notch. It is high time that this problem be remedied.

Under current law, there is a drastic inequity in Social Security payments made to those individuals born during the notch years of 1917–21. The 34,000 South Dakotans affected by the Social Security notch receive $22 million less in benefit payments per year than retirees born prior to 1917.

This year we have strong bipartisan support for a measure that would increase Social Security payments to individuals born between 1917 and 1921 without creating another benefits notch. By using a 10-year transition formula to make benefit payments more equitable, the cost of notch correction is held at less than $5 billion per year during the mid-1990's, and less thereafter. The $29,700 cap on credible earnings used in the transition formula will ensure that those retirees with modest earnings histories will receive the compensation they need. I receive many letters from notch retirees in South Dakota who can barely afford to pay the high cost of food, fuel, and medical bills each month.

Congress must take responsibility for the Social Security notch inequity. The bill we are introducing today is a reasonable solution to the Social Security notch problem. To date, we have over 20 cosponsors of this legislation. I am pleased to be a cosponsor of this bill and urge our colleagues to join in supporting it.

Mr. CHAFEE. Mr. President, I am pleased to join Senator SANFORD today in sponsoring the Social Security Notch Adjustment Act of 1991. This legislation is designed to corrct the Social Security notch inequity.

In 1977, Congress enacted some needed changes to the Social Security laws to ensure the long-term stability of the Social Security trust funds. While these changes were necessary to protect benefits, they also resulted in a transition formula which adversely affected Social Security recipients born between 1917 and 1921. These years have come to be known as the "notch years." Individuals born between those years end up receiving lower benefits than other Social Security recipients, even if they have similar work histories.

The Social Security Notch Adjustment Act corrects this problem and fairly addresses the concerns of those affected by the notch. I believe the legislation is a responsible solution to the notch problem and accomplishes the goal of restoring equity to the system without jeopardizing the solvency of the trust funds.

Mr. President, this issue has been around for some time. Senior citizens born during the notch years have been penalized for over 10 years. I am hopeful that this will be the year that Congress corrects this inequity by enacting the Social Security Notch Adjustment Act.

By Mr. HELMS:

S. 569. A bill to temporarily suspend the duty on N-[[4-chlorophenyl) amino] carbonyl]-2,6-difluorobenzamide; to the Committee on Finance.

DUTY SUSPENSION FOR DIMILIN

Mr. HELMS. Mr. President, in the 101st Congress, I introduced three bills to suspend temporarily the duty imposed on diflubenzuron, dichlobenil, and triflumizole. Similar bills were introduced in the House by Congresswoman NANCY JOHNSON. Due to some confusion in the last few weeks before passage of the so-called mini-trade bill (H.R. 1594) last year, one of those bills, the duty suspension for diflubenzuron, was not included. Today, I am reintroducing legislation to suspend temporarily the duty on diflubenzuron.

Mr. President, diflubenzuron, which goes by the trade name Dimilin, is produced only in Holland. It is imported by Uniroyal Chemical Co., which operates a plant in Gastonia, NC. Dimilin is an environmentally safe pesticide used primarily for the control of gypsy moth. It acts biologically on the moth larvae, which keeps it from hatching, rather than as a toxic killer.

When the duty suspension for Dimilin was introduced in 1989, there was some opposition expressed to the bill by Sandoz Crop Protection Co. In 1990, Sandoz withdrew their opposition. Unfortunately, their lettter did not arrive in time to get the duty suspension for Dimilin in the final conference report on H.R. 1594.

By Mr. JOHNSTON (for himself and Mr. WALLOP) (by request):

S. 570. A bill to implement the national energy strategy, and for other purposes; to the Committee on Energy and Natural Resources.

NATIONAL ENERGY STRATEGY ACT

• Mr. JOHNSTON. Mr. President, today I am introducing, with Senator WALLOP, by request, the National Energy Strategy Act transmitted to Congress by the Secretary of Energy, Admiral Watkins. These provisions comprise the nontax legislative component of the administration's national energy strategy.

I congratulate Admiral Watkins and the President on the development of the national energy strategy and the decision to submit legislation to implement the strategy. It has been obvious for some time that the events in the Middle East would lead to legislative attempts to address energy issues in the 102d Congress. Surely if we can send troops to fight in the Persian Gulf to avoid energy blackmail, we can devote a substantial portion of the time of the 102d Congress to put our energy policy in order.

We do not have a satisfactory energy policy now. However, with the President's and Admiral Watkins' participation, there is an excellent chance that this situation can be significantly improved.

So we welcome the administration's legislation and look forward to working with the administration on provisions of our own bill, S. 341, currently

pending in the Committee on Energy and Natural Resources. While not all provisions of the administration's bill will find support in the committee, we expect to derive useful ideas and insights from the administration's legislative efforts, as we already have from Admiral Watkins' efforts to develop the national energy strategy.

I ask unanimous consent that the transmittal letter, dated March 4, 1991, a sectional analysis of the bill and the full 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. 570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "National Energy Strategy Act".

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TITLE I—RESIDENTIAL COMMERCIAL AND FEDERAL ENERGY USE

Subtitle A—Consumer and Commercial Products

DEFINITIONS

SEC. 101. Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)) is amended—

(1) in paragraph (1) by inserting "electric lights and" after "includes";

(2) in paragraph (2) by inserting "commercial or" before "consumer";

(3) in paragraphs (4), (5), (7), (12), (13), (14), and (15) by striking "consumer" wherever it appears and inserting "covered" in its place;

(4) in paragraph (6)(A) by striking "covered" and inserting "consumer" in its place;

(5) in paragraph (27) by inserting ", other than a commercial water heater," after "product"; and

(6) by adding "(30) The term "commercial product" means an article which, to any significant extent, is distributed in commerce for commercial use." after paragraph (29).

COVERAGE

SEC. 102. Section 322 of the Energy Policy and Conservation Act (42 U.S.C. 6292) is amended—

(1) in subsection (a)—

(A) by striking "IN GENERAL" and inserting "CONSUMER PRODUCTS" in its place;

(B) by redesignating paragraph "(14)" as paragraph "(15)"; and

(C) by inserting "(14) Electric lights." after paragraph (13); and

(2) by adding the following subsection:

"(c) COMMERCIAL PRODUCTS.—The following commercial products are covered products:

"(1) Commercial space heating equipment.

(2) by adding the following subsection:

"(c) COMMERCIAL PRODUCTS.—The following commercial products are covered products:

"(1) Commercial space heating equipment.

"(2) Commercial space cooling equipment.

"(3) Commercial ventilation equipment.

"(4) Commercial water heaters.

"(5) Commercial refrigeration equipment.

"(6) Electric motors less than 25 horsepower.

"(7) Office equipment.".

TEST PROCEDURES

SEC. 103. Section 323(b)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)(1)(B) is amended—

(1) by inserting "commercial or" before "consumer"; and

(2) by striking "322(b)" and inserting "322(a)(14), (b), or (c)".

LABELING

SEC. 104. Section 324 of the Energy Policy and Conservation Act (42 U.S.C. 6294) is amended—

(1) in subsection (a)(2) by adding the following subparagraph after subparagraph (B):

"(C) The Commission shall prescribe labeling rules under this section applicable to covered products specified in section 322(a)(14) or (c), except for a class of covered products for which the Commission determines—

"(i) under the second sentence of section 324(b)(5), labeling in accordance with this section is not technologically or economically feasible, or

"(ii) labeling in accordance with this section is not preferable to alternative approaches, including voluntary labeling programs, considering the benefits, burdens, and reliability of information of both approaches."; and

(2) in sections 324(a)(3), (b)(1)(B), (b)(3), and (b)(5) by striking "(14)" wherever it appears and inserting "(15)" in its place.

ENERGY CONSERVATION STANDARDS

SEC. 105. Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended—

(1) in subsection (a)(2) by striking "covered" and inserting "consumer" in its place;

(2) in subsection (i) by striking "(14)" wherever it appears and inserting "(15)" in its place; and

(3) by adding the following subsection:

(r) ELECTRIC LIGHTS AND COMMERCIAL PRODUCTS.—The Secretary shall not prescribe energy conservation standards for electric lights or a commercial product specified in section 322(c).".

CONFORMING AMENDMENT

SEC. 106. The catchline for part B, title III of the Energy Policy and Conservation Act is amended by inserting "Commercial and" before "Consumer".

Subtitle B—Federal Energy Management

UTILITY INCENTIVE PROGRAMS

SEC. 111. Part 3 of Title V of the National Energy Conservation Policy Act (42 U.S.C. 8251–8259) is amended by adding the following after section 549—

"SEC. 550. UTILITY INCENTIVE PROGRAMS.—Notwithstanding any other law, an agency may participate in any program conducted by a gas or electric utility for the management of energy demand or for the application of energy conservation measures to Federal buildings and may accept, retain, and use, without further appropriations, any financial incentive available from a gas or electric utility for the management of energy demand or for the application of energy conservation measures. Any cash incentive received from a gas or electric utility shall be credited to the same appropriations account from which an agency has paid, or is authorized to pay, funds needed to participate in the utility program.".

TITLE II—NATURAL GAS

Subtitle A—Natural Gas Pipeline Regulatory Reform

GAS DELIVERY INTERCONNECTION

SEC. 201. Section 7(a) of the Natural Gas Act (15 U.S.C. 717f(a)) is amended to read as follows—

"(a)(1) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company or a person who has constructed, extended, or acquired, or is operating a facility under section 7(k) of this Act to extend or improve its transportation facilities; to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public; and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company or person, if the Commission finds that no undue burden will be placed upon the natural-gas company or person thereby.

"(2) Upon the petition of any person, the Commission, by order, may direct a natural-gas company or a person who has constructed, extended, or acquired, or is operating a facility under section 7(k) of this Act to establish, at petitioner's expense, physical connection of its transportation facilities with the petitioner's facilities in order to receive natural gas from the petitioner's facilities.

"(3) The Commission shall have no authority to—

"(A) compel the enlargement of transportation facilities for purposes described in paragraphs (1) and (2) of this subsection, or

"(B) compel a natural-gas company or a person who has constructed, extended, acquired, or who is operating a facility under section 7(k) of this Act to establish a physical connection or sell natural gas,

when to do so would impair its ability to render adequate service to its customers.".

NEPA COMPLIANCE

SEC. 202. (a) Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding the following after paragraph (2):

"(3) For purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the authorization of construction or extension of facilities by issuance of a certificate of public convenience and necessity by the Commission is the only Federal action that is considered a major Federal action requiring a detailed statement on the environmental impact of the proposed action in connection with the construction or extension of facilities.".

(b) Notwithstanding any other law, the Commission may charge an applicant directly for environmental documentation costs the Commission incurs in processing applications filed for permission to construct and operate natural gas pipeline facilities under the Natural Gas Act (15 U.S.C. 717 et seq.) and applications filed for hydroelectric licenses and relicenses under the Federal Power Act (15 U.S.C. 791 et seq.). Such a charge shall not be applied against the Commission's annual appropriations.

AMENDMENT TO SECTION 311 OF THE NATURAL GAS POLICY ACT OF 1978

SEC. 203. Section 311 of the Natural Gas Act of 1978 (15 U.S.C. 3371) is amended by—

(1) amending the catchline to read as follows:

"SEC. 311. AUTHORIZATION OF CERTAIN SALES, TRANSPORTATION, AND CONSTRUCTION."

and

(2) in subsection (a)—

(A) amending paragraph (1)(A) to read as follows:

"(A) IN GENERAL.—The Commission shall authorize, by rule or order, any interstate pipeline to transport natural gas on behalf of—

"(i) any intrastate pipeline,

"(ii) any local distribution company, or

"(iii) any other person.";

(B) amending paragraph (2)(A) to read as follows:

"(A) IN GENERAL.—The Commission shall authorize, by rule or order, any intrastate pipeline to transport natural gas on behalf of—

"(i) any interstate pipeline,

"(ii) any local distribution company served by any interstate pipeline, or

"(iii) any other person."; and

(C) adding the following after paragraph (2):

"(3) CONSTRUCTION.—Upon 30 days notification to the affected State commission, an interstate pipeline may construct facilities for transportation service provided under this subsection. Rates, terms, and conditions for services provided through facilities constructed for transportation service authorized under this subsection are not subject to State regulation.".

OPTIONAL CERTIFICATE PROCEDURES

SEC. 204. (a) Section 4 of the Natural Gas Act, (15 U.S.C. 717c) is amended—

(1) in subsection (a), by adding the following after "unlawful.", "A rate or charge made, demanded or received by any natural-gas company in connection with the transportation or sale of natural gas through facilities authorized under section 7(i) of this Act is just and reasonable and complies with subsection (b) of this section if the natural-gas company and the person paying the rate or charge mutually agree to that rate or charge."; and

(2) by adding the following subsection after subsection (e)—

"(f) Subsections (c), (d), and (e) of this section do not apply to the transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(i) of this Act.".

(b) Section 5(a) of the Natural Gas Act, (15 U.S.C. 717d) is amended by adding the following after the period, "This subsection does not apply to any rate, charge, or classification by a natural-gas company in connection with transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(i) of this Act.".

(c) Section 7 of the Natural Gas Act, (15 U.S.C. 717f) is amended—

(1) in subsection (c)(1)(B), by striking the period after "interest" and inserting, "; *Provided further*, That the Commission shall issue a certificate for the construction, extension, or acquisition of facilities for the transportation or sale of natural gas and for the operation of those facilities for that purpose to a natural-gas company that fulfills the terms and conditions contained in section 7(i) without requiring a hearing or further proof that the public convenience and

necessity would be served by those facilities. Such a certificate shall be non-exclusive and non-prejudicial to an application for any other authorization under the Natural Gas Act or the Natural Gas Policy Act."; and

(2) by adding the following two subsections after subsection (h)—

"(i)(1) The Commission shall issue to an applicant a certificate of public convenience and necessity to undertake the construction or extension of any facilities if the following terms and conditions are attached to the issuance of the certificate and to the exercise of the rights granted under it—

"(A) The applicant shall not include any costs or expenses it incurs in relation to the operation, sale, service, construction, extension, or acquisition of facilities covered by the certificate issued under this subsection in the rates and charges of any schedule required to be filed with the Commission under section 4(C);

"(B) Notwithstanding section 15(a) of this Act, the holder of a certificate issued under this subsection shall not participate in any proceedings under this Act to consider the application for a certificate for the construction or extension of facilities that, upon completion, would serve the service area served by the facilities authorized by the holder's certificate issued under this subsection.

"(2) The Commission shall issue to any applicant a certificate of public convenience and necessity authorizing the acquisition or operation of any facilities for which a certificate for the construction or extension has been issued under this subsection or for which abandonment of facilities or services subject to the jurisdiction of the Commission, including any sales or service rendered by means of such facilities, has been approved by the Commission under subsection (b) of this section if the terms and conditions in paragraph (1) (A) and (B) are attached to the issuance of the certificate and to the exercise of the rights granted under it.

"(j)(1) If the Commission, after a hearing held upon the petition of a person who has made a bona-fide offer to enter into a contract, finds that the failure to provide a requested rate, charge, classification, or practice in connection with the transportation of natural gas through facilities constructed, extended, acquired, or operated under a certificate issued under either section 7(i) or section 7(k) of this Act is unduly discriminatory, the Commission, considering market conditions and, to the extent relevant, the entire range of rates and services provided to others for transportation through those facilities, shall determine the rates, charges, classifications, or practices which are not unduly discriminatory to be observed and in force with respect to transportation to be provided to the petitioner, and shall fix the same by order.

"(2) A petition filed with the Commission under subsection (j)(1) shall contain a description of the transportation service sought, including the rates, charges, classifications, or practices requested by the petitioner, and the basis for asserting that the failure to provide the requested rates, charges, classifications, or practices is unduly discriminatory. Unless the Commission determines that capacity, in whole or in part, is not available to provide the transportation service sought by the petitioner, it shall issue an order within sixty days after the filing of the petition directing the requested transportation service to commence on the terms sought. However, if within sixty days of the filing of the petition, the person against whom the petition is filed responds by filing with the Commission the rates, charges, classifications, or practices which that person considers to be not unduly discriminatory for the service sought by the petitioner, the requested service shall commence sixty days after the filing of the petition, based upon the rates, charges, classifications, or practices filed in response, except to the extent the Commission finds capacity is not available. Any rate or charge collected on the basis of the response is subject to refund, with interest, by the person providing the transportation service for that portion which is collected in excess of rates or charges requested in the petition and which the Commission finds, after hearing, to be unduly discriminatory. The burden of proof to show that any rate or charge in excess of those filed in the petition is not unduly discriminatory is upon the person filing in response to the petition.".

NON-JURISDICTIONAL OPTION

SEC. 205. (a) Section 7 of the Natural Gas Act, (15 U.S.C. 717f) is amended as follows—

(1) in subsection (c)(1)(A) by striking "No" and inserting in its place "Except as provided in section 311 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3371) or subsection (j) of this section, no", and

(2) adding the following after subsection (j), as added by this subtitle—

"(k)(1) A person may elect to construct, extend, acquire, or operate a facility for the transportation or sale of natural gas and engage in the transportation or sale of natural gas through that facility without a certificate of public convenience and necessity issued by the Commission under this section.

"(2) If a person elects under this subsection not to obtain a certificate of public convenience and necessity—

"(A) the person is not a natural-gas company for the purposes of this Act in relation to the construction, extension, acquisition, or operation of facilities under this subsection or any sales or services rendered by means of such facilities;

"(B) notwithstanding section 15(a) of this Act, the person shall not participate in any proceeding under this Act to consider an application for a certificate for the construction or extension of facilities that, upon completion, would serve the service area served by the facility or extension constructed under this subsection;

"(C) the construction or extension of a facility authorized under this subsection may be subject to regulation by a State; however, rates or charges for the transportation or sale of natural gas by means of a facility or extension authorized under this subsection are not subject to regulation by a State, except that they may be regulated if that facility or extension is engaged solely in activities described in section 1(c) of this Act (15 U.S.C. 717(c)).".

(b) Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding after subsection (f) as added by this subtitle, the following new subsection—

"(g) After a hearing held upon the application of a natural-gas company, if the Commission finds that the natural-gas company has demonstrated that a market that the natural-gas company is authorized to serve is competitive and that the natural-gas company's transportation or sales services are offered in that market on a not unduly discriminatory basis, the Commission may issue an order finding that the rates and charges made, demanded, or received by the natural-gas company for or in connection with the transportation or sale of natural gas in that market are not subject to the jurisdiction of the Commission under this Act. A hearing held under this section is subject to section 15 of this Act.".

Subtitle B—Natural Gas Import/Export Deregulation

COVERAGE OF NATURAL GAS ACT

SEC. 211. Section 1(c) of the Natural Gas Act (15 U.S.C. 717(c)) is amended by inserting "or exported from such State" after "State" the second time it appears.

DEFINITIONS

SEC. 212. Section 2 of the Natural Gas Act (15 U.S.C. 717a) is amended—

(1) in paragraph (7) by inserting "included a foreign country," after "thereof," both places it appears, and

(2) by adding the following after paragraph (9):

"(10) "Importation" means the actions involved in bringing natural gas into the United States.

"(11) "Exportation" means the actions involved in taking natural gas out of the United States.".

NATURAL GAS IMPORTS AND EXPORTS

SEC. 213. Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended to read as follows:

"EXPORTATION OR IMPORTATION OF NATURAL GAS

"SEC. 3. (a) Importation of natural gas is considered a first sale for purposes of this Act and the Natural Gas Policy Act of 1978 (15 U.S.C. 3301-3432).

"(b) Neither the Commission nor a State may prohibit or condition the exportation or importation of natural gas or treat exported or imported natural gas while it is within the United States differently than any other natural gas.

"(c) The President may prohibit or condition the exportation or importation of natural gas upon finding that it is in the national interest.

"(d) Upon finding that the exportation or importation of natural gas is in the national interest, the President may waive any law relating to the exportation or importation of natural gas or may specify, by schedule or otherwise, when a particular law relating to the exportation or importation of natural gas is considered satisfied if the appropriate Federal or State agency has not taken final action.".

Subtitle C—Structural Reform of the Federal Energy Regulatory Commission

NATURAL GAS AND ELECTRICITY ADMINISTRATION

SEC. 221. (a) Section 2(a) of the Department of Energy Organization Act (42 U.S.C 7101(a)) is amended by striking ", including the Federal Energy Regulatory Commission".

(b) Section 204 of the Department of Energy Organization Act (42 U.S.C. 7134) is amended to read as follows:

"NATURAL GAS AND ELECTRICITY ADMINISTRATION

"SEC. 204. There shall be within the Department a Natural Gas and Electricity Administration established by title IV of this Act to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level III of the Executive Schedule under section 5314 of title 5, United States Code.".

(c) Section 301(b) of the Department of Energy Organization Act (42 U.S.C. 7151(b)) is amended to read as follows:

"(b) There are transferred to, and vested in, the Secretary the functions of the Fed-

eral Power Commission, the Federal Energy Regulatory Commission, and the members, officers, or components thereof.".

(d) Section 306 of the Department of Energy Organization Act (42 U.S.C. 7155) is amended by striking "Except as provided in title IV, there" and inserting in its place "There".

(e) Title IV of the Department of Energy Organization Act is amended to read as follows:

"TITLE IV—NATURAL GAS AND ELECTRICITY ADMINISTRATION

APPOINTMENT AND ADMINISTRATION

"SEC. 401. (a) There is established within the Department an Administration to be known as the Natural Gas and Electricity Administration.

"(b) The Secretary is responsible for the executive and administrative operation of the Natural Gas and Electricity Administration, including functions of the Natural Gas and Electricity Administration with respect to the appointment and employment of hearing examiners in accordance with title 5, United States Code.

"(c) The Secretary may require that hearing examiners appointed under this section conduct hearings on any matter within the Secretary's jurisdiction.

RULEMAKING PROCEEDINGS FOR RATES AND CHARGES

"SEC. 402. (a) Any function transferred to the Secretary under section 301(b) or section 306 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act may be conducted by rulemaking procedures. Except as provided in subsection (b), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

"(b) With respect to any rule or regulation promulgated by the Secretary to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act, the Secretary may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Secretary may establish a reasonable time for both the submission of questions and responses.".

(f) Section 501(a) of the Department of Energy Organization Act (42 U.S.C. 7191(a)) is amended—

(1) by striking "(1)";.

(2) by striking "other than the Commission,"; and

(3) by striking paragraph (2).

(g) Section 502 of the Department of Energy Organization Act (42 U.S.C. 7192) is amended:

(1) in subsection (a) by striking ", the Commission"; and

(2) in subsection (c) by striking "Subject to the provisions of section 401 of this Act, and notwithstanding" and inserting in its place "Notwithstanding".

(h) Section 503 of the Department of Energy Organization Act (42 U.S.C. 7193) is amended—

(1) by amending subsection (c) to read as follows:

"(c) If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall stay the effect of the remedial order, unless the Secretary finds the public interest requires immediate compliance with the order. The Secretary, upon request, shall afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Secretary determines that the right of cross examination is required for a full and true disclosure of the facts, the Secretary shall afford it. The Secretary shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action."; and

(2) by striking subsection (d).

(i) Section 504 of the Department of Energy Organization Act (42 U.S.C. 7194) is amended—

(1) in subsection (b)(1) by striking "Commission" and inserting in its place "Secretary"; and

(2) in subsection (b)(2) to read as follows:

"(b)(2) The Secretary shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Secretary under this section shall be considered final agency action within the meaning of section 704 of title 5, United States Code.".

(j) Section 605(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7215(a)(3)) by striking "or the Commission, as the case may be,".

(k) Section 649(a) of the Department of Energy Organization Act (42 U.S.C. 7259(a)) is amended by striking "and the Federal Energy Regulatory Commission" and "or the Commission".

(l)(1) Section 705 of the Department of Energy Organization Act (42 U.S.C. 7295) is amended—

(A) in subsection (a)(1) by striking "or the Commission"; and

(B) in subsection (a)(2) by striking "the Federal Energy Regulatory Commission,"; and

(C) in subsection (b)(2) by striking "and the Commission" and "or the Commission".

(2) For purposes of the transfer of functions from the Federal Energy Regulatory Commission to the Secretary of Energy by this Act, the phrases "the time this Act takes effect", "the date this Act takes effect", and "the date on which this Act takes effect" in section 705 of the Department of Energy Organization Act (42 U.S.C. 7295) are considered to refer to the date of enactment of this Act.

(m) Section 707 of the Department of Energy Organization Act (42 U.S.C. 7297) is amended by striking "the Federal Energy Regulatory Commission,".

(n) Section 708 of the Department of Energy Organization Act (42 U.S.C. 7298) is amended by striking "Except as provided in title IV, nothing" and inserting in its place "Nothing".

(o) Title 5, United States Code, is amended—

(1) in section 5314 by striking the following item: "Chairman, Federal Energy Regulatory Commission." and inserting in its place "Administrator, Natural Gas and Electricity Administration."; and

(2) in section 5315 by striking the following item: "Members, Federal Energy Regulatory Commission.".

(p) Section 901 of the Department of Energy Organization Act (42 U.S.C. 7341) is amended by striking "and the Commission" and "or the Commission".

(q) The Table of Contents of the Department of Energy Organization Act is amended—

(1) by striking the item for section 204 and inserting in its place "Natural Gas and Electricity Administration."; and

(2) by amending the items relating to title IV to read as follows:

"TITLE IV—NATURAL GAS AND ELECTRICITY ADMINISTRATION

"Sec. 401. Appointment and administration.

"Sec. 402. Rulemaking proceedings for rates and charges.".

TITLE III—OIL

Subtitle A—Alaska Coastal Plain Oil and Gas Leasing

PART 1—SHORT TITLE AND STATEMENT OF PURPOSE

SHORT TITLE

SEC. 301. This subtitle may be cited as the "Arctic Coastal Plain Competitive Oil and Gas Leasing Act".

STATEMENT OF PURPOSE

SEC. 302. It is the purpose of this subtitle to authorize competitive oil and gas leasing and development to proceed on the Coastal Plain in a manner consistent with protection of the environment, maintenance of fish and wildlife and their habitat, and the interests of the area's subsistence users.

PART 2—DEFINITIONS

DEFINITIONS

SEC. 303. When used in this subtitle—

(1) "Coastal Plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated February, 1991, on file in the office of the Director of the United States Fish and Wildlife Service;

(2) "Secretary" means the Secretary of the Interior or the Secretary's designee; and

(3) "significant adverse effects" means those effects which, despite the reasonable application of mitigation measures, if any, involving appropriate technology, engineering, and environmental control measures, including siting and timing restrictions, would result in widespread long-term reductions in habitat quality or availability that cause, or are likely to cause, a widespread long-term reduction in the natural abundance of any species of fish, wildlife, or plant.

PART 3—COASTAL PLAIN COMPETITIVE LEASING PROGRAM

LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN

SEC. 304. (a) The Secretary and other appropriate Federal officers and agencies shall take the actions necessary to establish and implement a competitive oil and gas leasing program that will provide for an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain. Activities pursuant to such program shall be undertaken—

(1) in accordance with the standards for protection of the environment required by part 4 of this subtitle; and

(2) in a manner to ensure that the public receives fair market value for the lands to be leased.

(b) This subtitle shall be the Secretary's sole legislative authority for authorizing and conducting an oil and gas leasing program on the Coastal Plain and related activities.

(c) The Coastal Plain shall be considered "Federal land" for purposes of the Federal Oil and Gas Royalty Management Act of 1982.

RULES AND REGULATIONS

SEC. 305. (a) The Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this subtitle, including, but not limited to, rules and regulations relating to protection of the environment of the Coastal Plain, as required by part 4 of this subtitle. Such rules and regulations shall be promulgated within nine months after the date of enactment of this subtitle and shall, as of their effective date, apply to all operations conducted under a lease issued under the provisions of this subtitle and all operations on the Coastal Plain related to the exploration, development and production of oil and gas and related activities.

(b) In the formulation and promulgation of rules and regulations under this subtitle, the Secretary shall consult with appropriate officials of the State of Alaska and the Government of Canada. The Secretary shall also consult with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

(c) The Secretary shall periodically review and, if in the Secretary's judgment it is appropriate, revise the rules and regulations issued under subsection (a) of this section to reflect any significant biological, environmental, or engineering data which come to the Secretary's attention.

ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT

SEC. 306. (a) The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142), and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), is hereby found by the Congress to be compatible and consistent with the major purposes and policies of the National Environmental Policy Act of 1969 with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this subtitle prior to conducting the first lease sale, and therefore, nothing in the National Environmental Policy Act of 1969 shall require any further environmental analysis or documentation in the development and promulgation of such regulations.

(b) Except as provided in subsection (a) of this section, nothing in this subtitle shall be considered or construed as otherwise limiting, amending, or affecting in any way the applicability of section 102(2)(C) of the National Environmental Policy Act of 1969 or its implementing regulations to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by this subtitle, nor shall anything in this subtitle, except as provided in section 322 of this subtitle, be considered or construed as in any way limiting, amending, or affecting the applicability of any other Federal law or State law not in conflict with Federal law relating to the protection of the environment.

LEASE SALES

SEC. 307. (a) Lands may be leased pursuant to this subitle to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

(b) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion from, a lease sale;

(2) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale;

(3) review and comment by the State of Alaska and local governments in Alaska which may be affected by oil and gas exploration, development or production activities on the Coastal Plain on, the schedule, configuration, and terms and conditions of each proposed lease sale; and

(4) periodic consultation with the State of Alaska and local governments in Alaska, oil and gas lessees, and representatives of other individuals or organizations engaged in activity in or on the Coastal Plain including those involved in subsistence uses and recreational activities.

(c) The Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process provided for in subsection (b) of this section. For the first lease sale, the Secretary shall, consistent with the requirements set forth in part 4 of this subtitle, offer for lease those acres nominated pursuant to subsection (b), giving preference to those acres receiving the greatest number of nominations, but not to exceed a total of three hundred thousand acres. If the total acreage nominated is less than three hundred thousand acres, the Secretary shall include in such sale any other acreage which the Secretary believes has the highest resource potential, but in no event shall more than three hundred thousand acres of the Coastal Plain be offered in such sale. Thereafter, no more than three hundred thousand acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held twenty-four months after the initial sale, with additional sales every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

(d) Areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives ninety days in advance of excluding any such areas from leasing. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary shall, consistent with the provisions of subsection (c) of this section, offer such lands for leasing.

GRANT OF LEASES BY THE SECRETARY OF THE INTERIOR

SEC. 308. (a) Consistent with the provisions of section 303(a)(2) of this subtitle, the Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary. The royalty shall be fixed in the lease and shall be not less than 12½ percent in amount or value of the production removed or sold from the lease.

(b) The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this subtitle to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity the Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned, the Secretary may issue an oil and gas lease to the entity under this subtitle.

(c)(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation which may substantially lessen competition. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation which may substantially lessen competition, the Secretary may—

(A) refuse to accept an otherwise qualified bid for such lease, or refuse to issue such lease, notwithstanding subsection (a) of this section; or

(B) modify or impose terms or conditions on the lease, consistent with advice provided by the Attorney General.

(4) The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if the Secretary makes specific findings that approval of the lease is necessary to carry out the purposes of this subtitle, that approval is consistent with the public interest, and that there are no reasonably available alternatives that would have significantly less anticompetitive effects. In such event, the Secretary must notify the lessee and the Attorney General of his findings.

(5) Nothing in this subsection shall restrict the authority of the Attorney General, the

Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendatioins, or seek appropriate relief.

(d) Nothing in this subtitle shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(e) As used in this section "antitrust review" means an "antitrust investigation" for the purpose of the Antitrust Civil Process Act (15 U.S.C. 1311).

LEASE TERMS AND CONDITIONS

SEC. 309. An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not to exceed two thousand five hundred and sixty acres, or four surveyed or protracted sections, whichever is larger, which shall be as compact in form as possible; *Provided*, That the Secretary is authorized to lease on a case-by-case basis units of up to 3,840 acres when necessary to consolidate partial tracts adjacent to the external boundaries of the Coastal Plain;

(2) be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, as approved by the Secretary, are conducted on the lease or unit area;

(3) require the payment of royalty as provided for in section 308 of this subtitle;

(4) require approval of an exploration plan, as provided for in section 310 of this subtitle;

(5) require approval of a development and production plan, as required in section 310 of this subtitle;

(6) require posting of bond required by section 311 of this subtitle;

(7) provide for the suspension of the lease during the initial lease term or thereafter pursuant to section 312 of this subtitle;

(8) provide for the cancellation of the lease during the initial lease term or thereafter pursuant to section 313 of this subtitle;

(9) contain the terms and conditions relating to protection of fish and wildlife, their habitat, and the environment, as required by part 4 of this subtitle;

(10) forbid the flaring of natural gas from any well unless the Secretary finds that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations;

(11) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(12) contain such other provisions as the Secretary determines necessary to ensure compliance with of this subtitle and the regulations issued under it.

EXPLORATION AND DEVELOPMENT AND PRODUCTION PLANS

SEC. 310. (a) All exploration activities pursuant to any lease issued or maintained under this subtitle shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this subtitle, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with this subtitle and other applicable law.

(b) All development and production pursuant to a lease issued or maintained pursuant to this subtitle shall be conducted in accordance with an approved development and production plan. Prior to commencing development or production pursuant to any oil and gas lease issued or maintained under this subtitle, the holder thereof shall submit a development and production plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with this subtitle and other applicable law.

(c) Exploration plans and development and production plans shall include where applicable—

(1) the names and legal addresses of the following persons: the operator, contractors, subcontractors and the owners or lessees other than the operator;

(2) a map or maps showing—

(A) the location of a point of reference selected by the operator within the area covered by the plan of operations showing, in relation to that point, existing and proposed access routes or roads within the area, the boundaries of proposed surface disturbance and location of all survey lines;

(B) the location of proposed drilling sites, wellsite layout, and all surface facilities;

(C) sources of construction materials within the area including but not limited to water and gravel; and

(D) the location of ancillary facilities including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips. A point of reference selected by the operator within the area of operations shall be marked with a ground monument;

(3) a description of—

(A) all surface and ancillary facilities, including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips;

(B) the major equipment to be used in the operations, including but not limited to equipment and methods for transporting all waters used in or produced by operations, and the proposed method of transporting such equipment within the area covered by the plan of operations including to and from the site; and

(C) construction materials within the area including but not limited to water and gravel;

(4) an estimated schedule for any phase of operations of which review by the Secretary is sought and the anticipated date of operation completion;

(5) the nature and extent of proposed operations;

(6) a description of all licenses and permits necessary to carry out the plan;

(7) plans for reclamation, including:

(A) the anticipated reclamation work to be performed;

(B) a proposed schedule of reclamation activities to be performed; and

(C) a detailed estimate of reclamation costs;

(8) methods for the storage and disposal of all wastes and hazardous and toxic substances;

(9) an affidavit stating that the operations planned will be in compliance with all applicable Federal, State, and local laws and regulations;

(10) contingency plans in case of spills, leaks, or other accidents;

(11) certification that the plan complies with the State of Alaska's approved coastal zone management program, if required by the Coastal Zone Management Act of 1972, as amended, and the date such certification was submitted to the appropriate State agency for review pursuant to section 307(c)(3) of that Act; and

(12) such additional information as may be required by the Secretary to ensure that the proposed activities are consistent with the subtitle, as well as other applicable Federal and State environmental laws.

(d)(1) After an exploration or development and production plan is submitted for approval, the Secretary shall promptly publish notice of the submission and availability of the text of the proposed plan in the Federal Register and a newspaper of general circulation in the State of Alaska and provide an opportunity for written public comment.

(2) Within one hundred and twenty days after receiving an exploration or development and production plan; or when consistency certification is required under the Coastal Zone Management Act of 1972, within thirty days after the State of Alaska concurs, or is conclusively presumed to concur, with the consistency certification accompanying the plan pursuant to section 307(c)(B) (i) or (ii) of the Coastal Zone Management Act of 1972 or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act, whichever period is later, the Secretary shall determine, after taking into account any comment received under paragraph (1) of this subsection, whether the activities proposed in the plan are consistent with this subtitle and other applicable provisions of Federal law and State law not in conflict with Federal law. If that determination is in the affirmative, the Secretary shall return the plan along with a statement of any modifications necessary for its approval. The Secretary, as a condition of approving any plan under this section—

(A) may require modifications to the plan that the Secretary considers necessary or appropriate to make it consistent with this subtitle and other applicable law. The Secretary shall assess reasonable fees or charges for the reimbursement of all necessary and reasonable research, administrative, monitoring, enforcement, and reporting costs associated with reviewing the plan and monitoring its implementation; and

(B) shall require such periodic reports regarding the carrying out of the drilling and related activities as may be necessary or appropriate for purposes of determining the extent to which the plan is being complied with and the effectiveness of the plan in ensuring that the drilling and related activities are consistent with this subtitle and other applicable provisions of Federal law and State law not in conflict with Federal law.

(e) If at any time while activities are being carried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, or on their habitat, or on the environment, the Secretary, after consultation with the lessee, shall—

(1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect;

(2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid significant adverse effect; or

(3) terminate and cancel the plan when actions under paragraphs (1) or (2) will not avoid the significant adverse effect.

BONDING REQUIREMENTS

SEC. 311. (a) As a condition of approval of an exploration or development and production plan, the lessee shall be required to file with the Secretary a suitable performance bond. The bond shall be conditioned upon compliance with all the terms and conditions of the lease and all applicable laws. Such performance bond is in addition to and not in lieu of any bond or security deposit required by other regulatory authorities or required by any other provision of law. The lessee may file either a surety bond, or a personal bond consisting of cash or negotiable Treasury bonds of the United States. When negotiable Treasury bonds serve as the personal bond, they shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of a default in the performance of the terms and conditions of the lease.

(b)(1) The performance bond shall be in an amount—

(A) to be determined by the Secretary to provide for the estimated full cost of reclamation of the lease site in accordance with an approved or revised exploration or development and production plan; plus

(B) an amount set by the Secretary, consistent with the type of operations proposed, to cover the estimated costs to provide the means for rapid and effective cleanup, and to minimize damages resulting from an oil spill; the escape of gas, refuse, domestic wastewater, or hazardous or toxic substances; or fire caused by oil and gas activities.

(2) The Secretary shall review, and adjust if he determines necessary, the amount of the performance bond at least every three years to ensure its adequacy in accordance with paragraph (1) of this subsection.

(c) In the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond to conform to such modified plan.

(d) The responsibility and liability of the lessee and its surety under the bond or security deposit shall continue until such time as the Secretary, after consultation with affected Federal and State agencies, determines that there has been compliance with the terms and conditions of the lease and all applicable law.

(e) Within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary shall notify the lessee that the period of liability under the bond or security deposit has been terminated.

LEASE SUSPENSION

SEC. 312. The Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this subtitle—

(1) in the interest of conservation of the resource;

(2) where there is no available system to transport the resource; or

(3) where there is a threat of significant adverse effect upon fish or wildlife, their habitat or the environment.

If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

LEASE CANCELLATION

SEC. 313. (a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this subtitle, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this subtitle, such lease may be canceled by the Secretary if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of this subtitle, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this subtitle, such lease may be forfeited and canceled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under this subtitle.

(c)(1) In addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be canceled at any time, if the Secretary determines, after a hearing, that—

(A) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense;

(B) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time; and

(C) the advantages of cancellation outweigh the advantages of continuing such lease.

(2) Such cancellation shall not occur unless and until operations under such lease shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

(3) Cancellation under this subsection shall entitle the lessee to receive such compensation as the lessee demonstrates to the Secretary to be equal to the lesser of—

(A) the fair market value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including the costs of compliance with all applicable regulations and operating orders; liability for cleanup costs or damages, or both, in the case of an oil spill or spill of other hazardous or toxic materials; fines, damages, penalties, or removal costs assessed pursuant to section 318 of this subtitle or other State or Federal environmental law; any fees paid pursuant to section 331 of this subtitle; and all other costs reasonably anticipated on the lease; or

(B) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee (exclusive of any fines, damages, penalties, or removal costs assessed pursuant to section 318 of this subtitle or other State or Federal environmental law, and any fees paid pursuant to section 331 of this subtitle) after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement).

(d) Cancellation of a lease under this section shall in no way release the owner of the lease from the obligation to provide for reclmation of the lease site.

ASSIGNMENT OR SUBLETTING OF LEASES

SEC. 314. No lease issued under this subtitle shall be assigned or sublet, except with the consent of the Secretary.

RELINQUISHMENT

SEC. 315. The lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this subtitle. The Secretary shall accept the relinquishment by the lessee of any lease issued under this subtitle where there has not been surface disturbance on the lands covered by the lease.

UNITIZATION

SEC. 316. For the purpose of conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof including the construction of a common carrier pipeline to transport oil and gas to the exterior boundary of the Coastal Plain. The Secretary is also authorized and directed to enter into such agreements as are necessary and appropriate for the protection of the United States against drainage.

OIL AND GAS GEOLOGICAL AND GEOPHYSICAL INFORMATION

SEC. 317. (a)(1) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this subtitle shall provide the Secretary access to all geological and geophysical data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(2) If interpreted information provided pursuant to paragraph (1) of this subsection is provided in good faith by the lessee or permittee, such lessee or permittee shall not be responsible for any consequence of the use or of reliance upon such interpreted information.

(3) Whenever any geological or geophysical data or information is provided to the Secretary, pursuant to paragraph (1) of this subsection—

(A) by a lessee or permittee, in the form and manner of processing which is utilized by such lessee or permittee in the normal conduct of business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(B) by a lessee or permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information.

(b) The Secretary shall maintain the confidentiality of all geological and geophysical information obtained pursuant to subsection (a) of this section until such time as the Secretary determines that making such data available to the public would not be likely to damage the competitive position of the lessee or permittee.

REMEDIES AND PENALTIES

SEC. 318. (a) Except as provided in section 319 of this subtitle, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under this subtitle. Proceedings may be instituted in the judicial district in which any defendant resides or has his principal place of business, or in the judicial district in which the Coastal Plain is located.

(b) At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which any defendant resides or has his principal place of business, or in the judicial district in which the Coastal Plain is located, for a permanent or temporary injuction, or, in addition to the Secretary's authority under subsection (c), to assess and recover a civil penalty of not more than $20,000 per day for each violation, or for any other appropriate remedy to enforce any provision of this subtitle, any regulation or order issued under this subtitle, or any term of a lease issued pursuant to this subtitle.

(c)(1) Except as provided in paragraph (2), if any person fails to comply with any provision of this subtitle, or any term of a lease issued pursuant to this subtitle, or any regulation or order issued under this subtitle, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $20,000 for each day of the continuance of such failure. The Secretary may assess, collect and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing. The Secretary shall, by regulation at least every three years, adjust the penalty specified in this paragraph to reflect any increase in the Consumer Price Index (all items, United States average) as prepared by the Department of Labor.

(2) If a failure described in paragraph (1) constitutes or constituted a threat of an irreparable or immediate significant adverse effect on fish and wildlife or their habitat, property, any mineral deposit, or the marine, coastal plain, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

(d) Any person who knowingly—

(1) violates any provision of this subtitle, any term of a lease issued pursuant to this subtitle, or any regulation or order issued under this subtitle designed to protect health, safety, or the environment or conserve natural resources;

(2) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any application, record, report or other document filed or required to be maintained under this subtitle;

(3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this subtitle; or

(4) reveals any data or information required to be kept confidential by section 317 of this subtitle.

shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more then ten years, or both. Each day that a violation under paragraph (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in paragraph (3) of this subsection, shall constitute a separate violation for purposes of imposition of a fine under this subsection.

(e) Whenever a corporation or other entity is subject to prosecution under subsection (d) of this section, any officer or agent of such corporation or entity who knowingly authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (d) of this section.

(f) The remedies and penalties prescribed in this subtitle shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this subtitle shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(g) In the case of any discharge of oil, hazardous or toxic substances, or any other pollutant that adversely affects the environment in the area of the Coastal Plain or adjacent waters from exploration, development, or production of oil or gas or related activities, conducted by, or on behalf of, a responsible party, each responsible party shall be jointly, severally and strictly liable for the removal costs and damages specified in this subsection that arise out of or directly result from such pollution. The Secretary shall make a determination with respect to such liability for all remedies and penalties prescribed in this subtitle after notice to the responsible party and an opportunity for hearing. It is the responsibility of the responsible party adequately to control and remove the discharge consistent with the National Contingency Plan. Upon failure, inability or delay of the responsible party adequately to control and remove the pollutant, the Federal on scene coordinator, in cooperation with the Secretary, in the exercise of his discretion and in cooperation with other Federal, State, or local agencies or in cooperation with the responsible party, or both, shall have the right to accomplish the control and removal at the expense of the responsible party. Funds contained in the Coastal Plain Liability and Reclamation Fund, provided for by section 331 of this subtitle, may be used to accomplish such control and removal until such time as sufficient funds can be recovered from the responsible party. The removal costs and damages referred to in this subsection are the following—

(1) all removal costs incurred by the United States;

(2) damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by the Secretary for damages to Federal natural resources or the State of Alaska for damages to State natural resources;

(3) damages for injury to, or economic loss resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property;

(4) damages for loss of subsistence use of natural resources; which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources;

(5) damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Secretary, where such damages are associated with Federal natural resources, or the State of Alaska, where such damages are associated with State natural resources;

(6) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant; and

(7) damages for net costs of providing increased or additional public services during or after the removal activities, including protection from fire, safety, or health hazards, caused by the discharge, which shall be recoverable by the Secretary, the State of Alaska, or a political subdivision of that State.

With respect to any removal costs and damages recoverable under this subtitle from the Fund or any other Federal compensation and liability fund, until the Fund has been exhausted, no claimant may bring an action for removal costs or damages available under such other funds.

(h)(1) An action for damages under this subtitle shall be barred unless the action is brought within 3 years after—

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of natural resource damages under subsection (g), the date of completion of the natural resources damage assessment.

(2) An action for recovery of removal costs referred to in subsection (g) must be commenced within 3 years after completion of the removal action.

JUDICIAL REVIEW

SEC. 319. Any complaint filed seeking judicial review of an action of the Secretary in promulgating any regulation under this subtitle may be filed only in the United States Court of Appeals for the District of Columbia, and such complaint shall be filed within ninety days from the date of such promulgation, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Except as provided in section 321, any complaint seeking judicial review of any other actions of the Secretary under this subtitle may be filed in any appropriate district court of the United States, and such complaint must be filed within ninety days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Action of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

ANNUAL REPORT TO CONGRESS

SEC. 320. On March 1st of each year following the date of enactment of this subtitle, the Secretary shall prepare and submit to

the Congress an annual report on the leasing program authorized by this subtitle.

INTERESTS OF ARCTIC SLOPE REGIONAL CORPORATION AND KAKTOVIK INUPIAT CORPORATION

SEC. 321. (a) The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Arctic Slope Regional Corporation and the Kaktovik Inupiat Corporation within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are repealed.

(b) The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Arctic Slope Regional Corporation and the Kaktovik Inupiat Corporation within the Coastal Plain are repealed as of the day after the first lease sale is held pursuant to this subtitle. With respect to the lands and interests therein described in this subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

(c) The substantive provisions of the final regulations issued pursuant to this subtitle which establish environmental stipulations, terms, and conditions for oil and gas leasing on the Coastal Plain shall apply to the exploration and development of all subsurface property interests owned by the Arctic Slope Regional Corporation within the Arctic National Wildlife Refuge: Provided, That prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection (a), shall be governed by the stipulations set forth in appendix 2 of the August 9, 1983, agreement between the Arctic Slope Regional Corporation and the United States.

(d) Any claims for monetary damages brought by the Arctic Slope Regional Corporation or the Kaktovik Inupiat Corporation alleging that the provisions of this subtitle constitute a taking of property rights under the fifth amendment to the Constitution of the United States may be brought within one hundred and twenty days of its enactment. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in the United States Claims Court in accordance with 28 U.S.C. 1491. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

PART 4—COASTAL PLAIN ENVIRONMENTAL PROTECTION

NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES

SEC. 322. (a) The Secretary shall administer this subtitle through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions designed to ensure that the oil and gas exploration, development, and production activities on the Coastal Plain will be conducted in a manner that avoids significant adverse effect on fish and wildlife, their habitat, and the environment. Activities conducted under this subtitle shall not be subject to findings or determinations of compatibility by the Secretary under the National Wildlife Refuge System Administration Act.

(b) The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific assessment be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a plan be implemented to mitigate any adverse effect assessed under paragraph (1) of this subsection; and

(3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

REGULATIONS TO PROTECT THE COASTAL PLAIN'S FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS AND THE ENVIRONMENT

SEC. 323. (a) Prior to implementing the leasing program authorized by part 3 of this subtitle, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by this subtitle are conducted in a manner consistent with the purposes and environmental requirements of this subtitle.

(b) The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by part 3 of this subtitle shall require compliance with all applicable provisions of Federal and State environmental law and shall also require—

(1) as the Secretary deems appropriate, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) that exploration activities, except for surface geological and geophysical studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, air transport methods, or any other method that would be at least as protective of the environment as the aforementioned: *Provided*, That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and the Secretary finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) design safety and construction performance standards for all pipelines and any access and service roads that—

(A) minimize adverse effects upon the passage of migratory species such as caribou to the maximum extent practicable; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges and other structural devices;

(5) prohibitions or restrictions on public access and use on all airfields, pipeline access, and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this subtitle, requiring the removal for the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: Provided, That the Secretary may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river systems; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling mud and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) minimization of adverse effect on subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archaeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(c) In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider—

(1) the environmental protection standards which governed the initial Coastal Plain exploration program (50 Code of Federal Regulations 37.31-33);

(2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States; and

(3) the operational stipulations for Koniag ANWR Interest lands contained in the draft agreement between Koniag, Incorporated and the United States of America on file with the Secretary on January 19, 1989.

SADLEROCHIT SPRING SPECIAL AREA

SEC. 324. (a)(1) The Sadlerochit Spring Special Area, comprising approximately four thousand acres as depicted on the map referenced in section 303 of this subtitle, is hereby designated to be a special area. Such special area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(2) Pursuant to subsection (d) of section 307 of this subtitle, the Secretary may exclude the Sadlerochit Spring Special Area from leasing.

(3) In the event that the Secretary leases the Sadlerochit Spring Special Area, or any part thereof, for purposes of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(b) The Secretary is authorized to designate other areas of the Coastal Plain as Special Areas if the Secretary determines that they are of unique character and interest so as to require such special protection. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives of the Secretary's intent to designate such areas ninety days in advance of making such designations. Any such areas designated as special areas shall be managed in accordance with the standards set forth in subsection (a) of this section.

FACILITY CONSOLIDATED PLANNING

SEC. 325. (a) The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. This plan shall have the following objectives—

(1) avoiding unnecessary duplication of facilities and activities;

(2) encouraging consolidation of common facilities and activities;

(3) locating or confining facilities and activities to areas which will minimize impact on fish and wildlife, their habitat, and the environment;

(4) utilizing existing facilities wherever practicable; and

(5) enhancing compatibility between wildlife values and development activities.

(b) The plan prepared under this section shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2394).

RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN

SEC. 326. The Secretary is authorized to grant under section 28 of the Mineral Leasing Act (30 U.S.C. 185) rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The regulations issued pursuant to this subtitle shall include provisions regarding the granting of rights-of-way across the Coastal Plain. The provisions of title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.) and the provisions of the National Wildlife Refuge System Administration Act relating to rights-of-way and easements shall not apply to rights-of-way and easements across the Coastal Plain.

ENVIRONMENTAL STUDIES

SEC. 327. In addition to any other environmental studies required by law, subsequent to exploring or developing any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environmental information as the Secretary deems necessary, and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide information which can be used for comparison with any previously-collected data for the purpose of identifying any effects on the fish or wildlife and their habitat and any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such effects or changes.

ENFORCEMENT OF SAFETY AND ENVIRONMENTAL REGULATIONS

SEC. 328. (a) The Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this subtitle.

(b) It shall be the responsibility of any holder of a lease under this subtitle to—

(1) maintain all operations within such lease area in compliance with regulations intended to protect persons and property on, and fish and wildlife, their habitat, and the environment of, the Coastal Plain; and

(2) allow prompt access at the site of any operations subject to regulation under this subtitle to any appropriate Federal or State inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) The Secretary shall promulgate regulations to provide for—

(1) schedule onsite inspection by the Secretary, at least twice a year, of each facility on the Coastal Plain which is subject to any environmental or safety regulation promulgated pursuant to this subtitle or such provisions contained in any lease issued pursuant to this subtitle to assure compliance with such environmental or safety regulations; and

(2) periodic onsite inspection by the Secretary at least once a year without advance notice to the operator of such facility to assure compliance with all environmental or safety regulations.

PART 5—LAND RECLAMATION AND RECLAMATION LIABILITY FUND

LAND RECLAMATION

SEC. 329. The holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the lease holder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

STANDARD TO GOVERN LAND RECLAMATION

SEC. 330. The standard to govern the reclamation of lands required to be reclaimed under this subtitle, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of roads, drill pads, and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

COASTAL PLAIN LIABILITY AND RECLAMATION FUND

SEC. 331. (a) Within six months of a commercial discovery within the Coastal Plain, the Secretary shall establish the Coastal Plain Liability and Reclamation Fund (the "Reclamation Fund").

(b) The Secretary shall collect from the operator a fee of 5 cents per barrel on commercially produced crude oil from the Coastal Plain at the time and point where such crude oil first leaves the Coastal Plain. The collection of the fee shall cease when $50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below $45,000,000.

(c) All revenues collected under subsection (b) shall be paid into the Reclamation Fund. The Secretary is authorized to pay, to the extent provided in annual appropriation Acts, reasonable costs of administration of the Reclamation Fund from the revenues in the Reclamation Fund. All sums not needed for administration of the Reclamation Fund or making authorized payments out of the Reclamation Fund shall be invested by the Secretary of the Treasury, at the request of the Secretary, in public debt securities with maturities suitable to the needs of the Reclamation Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Income from such securities shall be added to the principal of the Reclamation Fund.

(d) The revenues in the Reclamation Fund shall be available, to the extent provided in annual appropriations Acts and with the approval of the Secretary, for the following purposes:

(1) oil removal costs incurred by the United States;

(2) to compensate promptly any person or entity, public or private, for any direct damages caused by oil and gas exploration, development and production activities on or in the vicinity of the Coastal Plain;

(3) to reclaim any area of the Coastal Plain not reclaimed in accordance with the standard set forth in section 330 of this subtitle, by the operator or the holder of a lease or leases;

(4) up to $15,000,000 annually to reclaim and restore—

(A) any area of the Arctic National Wildlife Refuge or other North Slope Federal lands affected by past or future oil and gas exploration, development, or production; and

(B) North Slope non-Federal lands affected by future exploration, development, or production on the Coastal Plain which are not reclaimed and restored in accordance with applicable Federal law and with applicable State law not in conflict with Federal law;

(5) up to $2,000,000 annually to the Secretary to monitor and conduct research on fish and wildlife species which utilize the land and water resources of the Coastal Plain; and

(6) to reclaim at the conclusion of the period of exploration, development and production with respect to any lease, any area of the Coastal Plain and related lands which have not been properly reclaimed by the operator or lease holder.

(e) The United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover any funds expended under paragraphs (1), (2), (3), (4), and (6) of this subsection due to a failure by the responsible party to reclaim such area as required by this subtitle: Provided, That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

(f) Any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production, and reclamation has been concluded in the Coastal Plain shall be paid into the miscellaneous receipts of the Treasury of the United States.

PART 6—DISPOSITION OF OIL AND GAS REVENUES

DISTRIBUTION OF REVENUES

SEC. 332. Notwithstanding any other provision of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees (other than those fees collected pursuant to section 310(d)(2)(A) and section 331(b) of this subtitle), interest charges, or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife Refuge, shall be deposited into the miscellaneous receipts of the Treasury of the United States.

JUDICIAL REVIEW

SEC. 333. (a) Notwithstanding section 319 of this subtitle, any legal action, including an action for declaratory judgment, to challenge section 332 of this subtitle, shall be assigned for hearing and completed at the earliest possible date; shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time; and shall be expedited in every way by such court. Any such action shall be brought in an appropriate United States district court within ninety days of enactment of this subtitle. Such action shall be barred unless a complaint is filed within the time specified. Any review of an interlocutory or final judgment, decree, or order of the United States district court in such action may be had only upon direct appeal to the Supreme Court of the United States.

(b) Nothing in this section shall be construed to grant causes of action to any person or to waive any defenses which may be available to the United States.

(c) If any action is brought in accordance with subsection (a), no lease sale shall occur under section 307 of this subtitle until a final nonappealable decision has been issued in any such action.

Subtitle B—Naval Petroleum Reserve Leasing

SHORT TITLE

SEC. 341. This subtitle may be cited as the "Naval Petroleum Reserve Leasing Act".

LEASING AUTHORIZATION

SEC. 342. (a) Notwithstanding any other law, if the President finds that control and use of Naval Petroleum Reserve Numbered 1 by the United States is not necessary for national defense purposes or to assure its exploration, development, and operation, the Secretary of Energy (the "Secretary") may lease any or all of that reserve. As determined by the Secretary, portions of chapter 641 of title 10, United States Code, shall cease to apply with respect to the reserve from the effective date to be specified in a lease, and to the extent and under conditions that may be provided for elsewhere in this subtitle.

(b) The President shall submit a finding under this section to the Congress, together with a report on the basis for the finding, at least 60 days before the effective date of a lease of the reserve.

(c)(1) The Secretary may use the United States' share of lease proceeds received to satisfy contractual obligations directly related to the accomplishment of a lease and to pay any liabilities of the Department of Energy arising with respect to the interests leased at Naval Petroleum Reserve Numbered 1 and with respect to the settlement of issues under the Unit Plan Contract at Naval Petroleum Reserve Numbered 1, including any liabilities relating to payment of just compensation and under any Federal statute concerning the environment. The balance of funds received shall be utilized as provided in section 346 of this subtitle.

(2) Before entering into a lease under this subtitle, the Secretary shall determine that the rental price represents fair market value.

(d)(1) The Secretary shall notify the Attorney General of each proposed lease under this subtitle. The notification shall contain information that the Attorney General may require in order to advise the Secretary as to whether the lease may substantially lessen competition. Within thirty days after the notification, the Attorney General shall advise the Secretary whether the lease may substantially lessen competition.

(2) Nothing in this subtitle confers on any person immunity from civil or criminal liability, or creates defenses to actions, under the antitrust laws.

(3) As used in this section, the term "antitrust laws" means—

(A) the Sherman Act (15 U.S.C. 1 et seq.);

(B) the Clayton Act (15 U.S.C. 12 et seq.);

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(D) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a, commonly referred to as the "Robinson-Patman Act").

(e) The Secretary shall conduct a leasing action under this subtitle using competitive procedures and may reject any and all offers or bids for leases even if the offers or bids meet or exceed minimum acceptable levels.

(f) Any lease under this subtitle shall require that a royalty payment equal to not less than 12.5 percent of the value, as determined by the Secretary, of the oil, natural gas, and other hydrocarbon resources of the production removed or sold from the lease be paid to the "Naval Petroleum Reserve Lease Proceeds Special Account," provided for in section 346 of this subtitle.

(g) Any lease contract authorized under this subtitle shall be so structured as to require parties leasing the reserve or any interest in the reserve to—

(1) retain all records pertaining to the production, transportation and sale of production for a period of not less than 6 years, or such longer period as the Secretary by notice may require:

(2) make all such records available to the Secretary for audit; and

(3) provide that, in the event of a late payment of royalties, partial payment of royalties, or failure to pay any royalties due, the Secretary shall require the payment of interest and penalties and may cancel the lease.

(h) Any lease authorized under this subtitle shall be so structured as to require parties leasing the reserve to set aside a portion of the crude oil produced to sell to small refiners for processing or use in such refineries except that—

(1) none of the production sold to small refiners may be resold in kind;

(2) production must be sold at a cost of not less than the prevailing local market price of comparable petroleum; and

(3) the set-aside portion shall not exceed 25 percent of the estimated annual production at the reserve.

PROCEDURES TO ARRANGE AND CONDUCT A LEASING ACTION

SEC. 343. (a) Before and after the President's finding under section 342(a) of this Act, the Secretary may take the steps the Secretary considers necessary to arrange the lease of Naval Petroleum Reserve Numbered 1.

(b) In order to arrange and conduct a leasing action, the Secretary may:

(1) create new corporations, partnerships, or other business entities, and transfer the United States' interest to the new entities;

(2) enter into contracts with State or private entities, including contracts for technical, financial, auditing or other professional services; and

(3) use funds appropriated to the Department of Energy under the Department of the Interior and Related Agencies Appropriations Acts, but not to exceed five percent from the Naval Petroleum Reserves Account.

Resources and expertise of other Federal agencies shall be used to lease the Reserve when doing so will reduce the cost to the Federal government of leasing.

(c) Unless otherwise determined in accordance with section 342(e), all lands to be leased shall be leased to the highest responsible qualified bidder or bidders by competitive bidding under general regulations issued by the Secretary. The Secretary may establish bidding and lease terms and conditions the Secretary considers necessary or appropriate, including, but not limited to, the establishment of the acreage and units of lands to be leased and the minimum rental or royalty rates.

(d) A lessee of any of the United States' interest in Naval Petroleum Reserve Numbered 1 is not liable for any claim of liability arising exclusively from or during the ownership and operation of the interest by the United States. Such a claim may be asserted only against the United States to the extent and in the manner provided by law.

PRIVATELY OWNED LANDS AND PHYSICAL IMPROVEMENTS

SEC. 344. (a) Whenever the Secretary is otherwise unable to make arrangements the Secretary considers satisfactory for a lease of Naval Petroleum Reserve Numbered 1, the Secretary may acquire, by purchase, condemnation, or otherwise, privately owned lands or physical improvements within Naval Petroleum Reserve Numbered 1, as the Secretary considers necessary to facilitate the leasing action.

(b) Before condemnation proceedings are instituted, an effort shall be made to acquire the property by negotiation, unless, in the judgment of the Secretary, the effort to acquire the property by negotiation would be futile, unduly time consuming, or otherwise not in the public interest.

STRATEGIC PETROLEUM RESERVE TIE-IN; DEFENSE PETROLEUM INVENTORY

SEC. 345. (a) In the event of a lease of any part of Naval Petroleum Reserve Numbered 1 under this subtitle, sections 160(a), (b), and (d) of the Energy Policy and Conservation

Act (42 U.S.C. 6240(a), (b) and (d)) shall cease to apply to the reserve.

(b)(1) Title I, part B, of the Energy Policy and Conservation Act (42 U.S.C. 6215 *et seq.*) is amended by adding after section 167 a new section 168 as follows:

"DEFENSE PETROLEUM INVENTORY

SEC. 168. (a) Notwithstanding any other provision of this part, the Secretary may acquire or construct, operate, and maintain storage and related facilities to meet petroleum product requirements of the Department of Defense, and may acquire and store therein a Defense Petroleum Inventory of crude oil. This acquisition and storage shall be in addition to any acquisition or storage of crude oil for the Strategic Petroleum Reserve required by any other law, and crude oil acquired and stored under this section shall not be counted as part of the Strategic Petroleum Reserve. In carrying out the functions authorized by this section, the Secretary may exercise any authority available under this part.

"(b) The Secretary shall obligate the U.S. share of funds available in the Naval Petroleum Reserve Lease Proceeds Special Account created by section 346 of the Naval Petroleum Reserve Leasing act for the acquisition of 10 million barrels of crude oil for the Defense Petroleum Inventory. Until the acquisition of 10 million barrels of crude oil for the Defense Petroleum Inventory has been completed, the Secretary shall dedicate to the Defense Petroleum Inventory, crude oil contained in the Strategic Petroleum Reserve in sufficient quantities to maintain the Defense Petroleum Inventory at a level determined by multiplying 10 million barrels times the percentage of the United States' interest in Naval Petroleum Reserve Numbered 1 leased under the Naval Petroleum Reserve Leasing Act. Any crude oil so dedicated shall be considered to remain in storage for the purposes of any law relating to the rate of fill of the Strategic Petroleum Reserve.

"(C) Notwithstanding any other provision of this part, upon the request of the Secretary of Defense, crude oil acquired for or dedicated to the Defense Petroleum Inventory shall be drawn down and distributed by the Secretary to, or on behalf of, the Department of Defense for use, sale, or exchange. Crude oil in the Defense Petroleum Inventory may be drawn down and distributed, used, sold, or exchanged, without regard to—

"(1) whether the crude oil has been commingled with petroleum products of the Strategic Petroleum Reserve;

"(2) the requirements of this part concerning drawdown of the Strategic Petroleum Reserve; or

"(3) otherwise applicable Federal contracting statutes and regulations.

The Secretary of Energy shall exercise the authority provided by this subsection in a manner which does not adversely affect drawdown of the Strategic Petroleum Reserve.

"(d) Upon the request of the Secretary of Defense, and subject to the availability of funds from the Department of Defense, the Secretary shall acquire and store in the Defense Petroleum Inventory crude oil to replace crude oil drawn down under subsection (c).

"(e) An amendment to the Strategic Petroleum Reserve Plan relating to the exercise of this authority shall not be required.

"(f) The Department of Defense shall reimburse the Department of Energy for—

"(1) drawdown and distribution services provided under this section, in amounts that the Secretary determines to be reasonable;

"(2) all costs of acquiring crude oil for the Strategic Petrolum Reserve to replace crude oil drawn down and distributed under subsection (c); and

"(3) all costs of acquiring and storing in the Defense Petroleum Inventory any crude oil in excess of the initial 10 million barrels acquired for it or dedicated to it.

"(g) Crude oil acquired for the Defense Petroleum Inventory under subsection (a) shall be transferred to the Strategic Petroleum Reserve, pursuant to subsection (f)(2), in reimbursement on a barrel-for-barrel basis for the cost of replacement petroleum products acquired for the Strategic Petroleum Reserve.".

(2) The Table of Contents of the Energy Policy and Conservation Act is amended by inserting after the entry for section 167 the following:

"SEC. 168. Defense Petroleum Inventory.".

NAVAL PETROLEUM RESERVE LEASE PROCEEDS SPECIAL ACCOUNT AND REVENUE SHARING WITH THE STATE OF CALIFORNIA

SEC. 346. (a) There is established in the Treasury of the United States a fund called the "Naval Petroleum Reserve Lease Proceeds Special Account" (referred to as the "Special Account" in this subtitle) which shall be available to the Department of Energy without fiscal year limitation to carry out the purposes, functions, and powers authorized by this subtitle.

(b) There shall be deposited in the Special Account all proceeds realized under this subtitle from the lease of all or any part of the United States' interest in Naval Petroleum Reserve Numbered 1, including bonus and royalty payments.

(c) Fifty percent of the proceeds received from royalty payments and seven percent of the bonus payments from Naval Petroleum Reserve Numbered 1 under this subtitle shall, notwithstanding any other provision of law, be paid to the State of California (to be credited by the State in accordance with California Public Resources Code, section 8711 and allocated in the manner provided in California Statutes 1988 ch. 985, section 3, as amended from time to time). The portion of the proceeds accruing to the State of California from the bonus payment shall be paid to the State of California in seven annual payments, beginning one year from the date that the Federal Government receives the first installment of the bonus payment. No interest shall be due on these amounts to the State. Each of the seven annual payments shall be equal to one seventh of the lease bonus payment due to the State.

(d) The Secretary may make expenditures from the Special Account without further appropriation and without fiscal year limitation, but within specific directives or limitations that may be included in appropriation Acts, for any purposes necessary or appropriate to carry out section 168(b) of the Energy Policy and Conservation Act or to satisfy obligations related to the lease of Naval Petroleum Reserve Numbered 1 as specified in section 342(c)(1).

(e)(1) Upon a written notification from the Secretary to the Secretary of the Treasury that the Special Account contains funds in excess of the amounts considered necessary to fulfill the purposes specified in subsections (c) and (d), excess funds specified by the Secretary may be transferred from the Special Account to the miscellaneous receipts account of the Treasury of the United States. In the event funds are no longer required to fulfill the purposes specified in subsections (c) and (d), the Special Account shall be abolished and all remaining funds credited to the miscellaneous receipts account of the Treasury of the United States.

(2) Following abolition of the Special Account under subsection (e)(1), proceeds realized under this subtitle from the lease of all or any part of the United States' interest in Naval Petroleum Reserve Numbered 1 shall be deposited in the miscellaneous receipts account of the Treasury of the United States; except for the portion of royalty, interest and bonus payments specified in section 346(c) to be paid to the State of California, which shall continue to be paid to that State regardless of the status of the Special Account.

(f) The Secretary may collect lease proceeds on behalf of any private owner of Naval Petroleum Reserve Numbered 1 and may pay the owner its share of lease proceeds.

CONGRESSIONAL CONSULTATION

SEC. 347. Compliance with the procedures specified in sections 342 (b) and (d) of this subtitle is considered to satisfy the requirements of sections 7431(a) and 7431(b) of title 10, United States Code.

EFFECT ON SCHOOL LANDS GRANT

SEC. 348. (a) The authority to lease under this subtitle extends to sections 16 and 36 within Naval Petroleum Reserve Numbered 1.

(b) A payment may be made under section 346(c) of this subtitle only after—

(1) the State of California files, on behalf of all party plaintiffs, a motion to dismiss, with prejudice, the lawsuit it filed against the United States and certain agency officials in November 1987 in the United States District Court, Eastern District of California (No. CV-F-87; 665-EDP), and

(2) the State of California, by written agreement, forfeits any rights under section 6 of the Act of March 3, 1853 (Chapter CXLV; 10 Stat. 246) to Sections 16 and 36, Township 30 South, Range 23 East Mount Diablo Base and Meridian, located within Elk Hills, including all rights to indemnity lands under Revised Statutes 2275 and 2276 (43 U.S.C. 851 and 852).

The agreement referred to in paragraph (2) of this subsection is subject to the concurrence of the Attorney General of the United States.

CONFORMING AMENDMENTS

SEC. 349. (a) Section 501 of Public Law 101-45 (103 Stat. 103) is repealed.

(b) Sections 7422(a) and (b) of title 10, United States Code, are amended to read as follows:

"(a) The Secretary, directly or by contract, lease, or otherwise, shall explore, prospect, conserve, develop, use, and operate the naval petroleum reserves in his discretion, subject to the provisions of this chapter, except the authority to lease is not extended to Naval Petroleum Reserve Numbered 3.

"(b) Except as otherwise provided in this chapter, particularly subsection (c) of this section, and in the Naval Petroleum Reserve Leasing Act, the naval petroleum reserves shall be used and operated for—

"(1) the protection, conservation, maintenance, and testing of those reserves; or

"(2) the production of petroleum whenever and to the extent that the Secretary, with the approval of the President, finds that such production is needed for national defense purposes and the production is authorized by a joint resolution of Congress.".

(c) Section 7422(c)(1)(B) of title 10, United States Code, is amended to read as follows:

"(B) to produce such reserves at the maximum efficient rate consistent with sound engineering practices.".

(d) Sections 7422(c)(1)(C), 7422(c)(2), and 7426(b), (c) (d), and (e) of title 10, United States Code, are repealed.

(e) Section 7430(a) of title 10, United States Code, is amended to read as follows:

"(a) In administering the naval petroleum reserves under this chapter, except for those reserves covered by leases executed pursuant to the Naval Petroleum Reserve Leasing Act, the Secretary shall use, store, or sell the petroleum produced from the naval petroleum reserves and lands covered by joint, unit, or other cooperative plans as provided in this section.".

(f) Section 7430(b)(1) of title 10, United States Code, is amended by striking "paragraph (2) and notwithstanding any other provision of law" and inserting "subsection (a) and paragraph (2)".

(g) Section 7430(f) of title 10, United States Code, is amended to read as follows:

"(f) The consultation and approval requirements of section 7431(a)(3) are waived for contracts to sell petroleum produced from Naval Petroleum Reserves Numbered 1, 2, and 3, and for contracts to sell petroleum from the Naval Oil Shale Reserve which is produced for their exploration, protection, conservation, maintenance, and testing.".

(h) Section 7430(l)(1) of title 10, United States Code, is amended to read as follows:

"(l)(1) The Secretary, at the request of the Secretary of Defense, may provide any portion of the United States share of petroleum to the Department of Defense for its use, exchange, or sale in order to meet petroleum product requirements of the Department of Defense.".

(i) Section 7431(a) of title 10, United States Code, is amended by adding "Except for actions taken pursuant to the Naval Petroleum Reserve Leasing Act," at the beginning of the subsection.

(j) Sections 7431(b) and (c) of title 10, United States Code, are amended by striking "During the period of production authorized by section 7422(c) of this title, the" and inserting "The".

(k) Section 7433(b) of title 10, United States Code, is amended to read as follows:

"(b) Except as provided in the Naval Petroleum Reserve Leasing Act, all money accruing to the United States from lands in the naval petroleum reserves shall be covered into the Treasury.".

Subtitle C—Oil Pipeline Deregulation

SHORT TITLE

SEC. 351. This subtitle may be cited as the "Oil Pipeline Regulatory Reform Act."

FINDINGS AND PURPOSES

SEC. 352. (a) The Congress finds that—

(1) oil pipelines are of critical strategic and economic importance to the Nation;

(2) the Nation's interests are best served by encouraging the competitive and efficient operation of oil pipelines;

(3) economic regulation can impose unproductive costs, discourage and distort investment decisions, cause regulatory uncertainty, and often be only partially effective in achieving its goals;

(4) most markets served by oil pipelines are sufficiently competitive that, given application of the antitrust laws, economic regulation of pipelines in these markets in unnecessary to ensure reasonable rates and adequate service;

(5) for those oil pipeline markets for which competition and antitrust enforcement are not sufficient to ensure their efficient operation, continued economic regulation may be necessary to prevent abuse of significant market power;

(6) where continued economic regulation of oil pipelines remains necessary, that regulation must be reformed to maximize reliance on competition to benefit consumers, reduce regulatory costs, and encourage the efficient use and development of existing and new pipelines;

(7) for those oil pipeline markets for which continued economic regulation is necessary, consumers can best be protected, costs of regulation can best be reduced, and efficiency can best be enhanced by regulating the maximum rates that pipelines may charge and adjusting the maximum rates to reflect price changes in competitive markets while allowing pipelines freely to discount below those maximum rates; and

(8) this reformed rate regulation in markets in which there is significant market power will provide just compensation to a pipeline if the allowable rate is comparable to what that rate would be if the market were competitive and not subject to market power, as calculated by a method that establishes maximum rates, permits them to be revised if they had been enhanced by market power, and adjusts them over time by an index reflecting pipeline prices in competitive markets.

(b) It therefore is the policy of the Federal Government—

(1) to remove the burden of economic regulation from those oil pipeline markets that operate under competitive circumstances or for which that regulation would not be an effective or efficient remedy to constrain the exercise of market power; and

(2) to provide for continued economic regulation of only those oil pipeline markets for which regulation will increases economic efficiency and for which the benefits of regulation outweigh its costs.

REGULATORY REFORM AND DEREGULATION

SEC. 353. The Department of Energy Organization Act (42 U.S.C. 7101-7352) is amended by adding after section 407 the following new sections:

"REGULATION OF PIPELINES

"SEC. 408. (a) As used in this section and sections 409 and 410—

"(1) "adjudication" means an agency hearing, which, in the discretion of the Secretary, may be a hearing on the record governed by section 554 of title 5, United States Code;

"(2) "Attorney General" means the Attorney General of the United States or the Attorney General's designee;

"(3) "Commission rate regulation" means those functions and authorities set forth in section 410 of this Act;

"(4) "existing Commission regulatory jurisdiction" means those functions and authorities transferred by sections 306 and 402(b) of the Department of Energy Organization Act (42 U.S.C. 7155, 7172(b));

"(5) "existing pipeline" means a pipeline that was brought into service or was under construction before January 1, 1991;

"(6) "interested person" means a person whose economic or business interests would be substantially affected by a finding that Commission rate regulation is in the public interest or that a base rate should be revised;

"(7) "new pipeline" means a pipeline that was brought into service after January 1, 1991, and was not under construction before January 1, 1991;

"(8) "pipeline" means a pipeline subject to existing Commission regulatory jurisdiction or which would be subject to existing Commission regulatory jurisdiction except for this section, but it does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or a pipeline directly or indirectly delivering oil to the Trans-Alaska Pipeline; and

"(9) "rate" means the price for transportation by pipeline, including all charges that the pipeline requires its customers to pay for the transportation and for any ancillary services set forth as part of that pipeline's tariff on file with the Commission on January 1, 1991, or approved by the Commission after January 1, 1991.

"(b)(1) Existing Commission regulatory jurisdiction over pipelines terminates sixty days after the effective date of the Oil Pipeline Regulatory Reform Act. On that date, pipelines become subject to sections 408, 409, 10, and 411 of this Act.

"(2)(A) Within 120 days after the effective date of the Oil Pipeline Regulatory Reform Act, the Attorney General may petition the Secretary for an adjudication of whether Commission rate regulation of an existing pipeline in any market is in the public interest. Upon receipt of such a petition, the Secretary shall conduct an adjudication in accordance with subsection (b)(3). In deciding whether to bring a petition, the Attorney General shall be guided by the methods, assumptions, standards, and definitions underlying and set forth in the report of the United States Department of Justice dated May 1986 entitled "Oil Pipeline Deregulation." None of the findings and conclusions of the report, and none of the methods, assumptions, standards, and definitions underlying and set forth in the report are binding on the Secretary in an adjudication conducted under this section.

"(B) Within 180 days after the effective date of the Oil Pipeline Regulatory Reform Act, an interested person may petition the Secretary for an adjudication of whether Commission rate regulation of an existing pipeline in any market is in the public interest. A person filing such a petition shall provide a reasonable basis for the conclusion that Commission rate regulation is in the public interest, and shall serve a copy of the petition on the Attorney General and on the pipeline for which Commission rate regulation is sought. Upon receipt of the petition, the Secretary, for good cause shown, may conduct an adjudication in accordance with subsection (b)(3). The Secretary may consult with the Attorney General in deciding whether to conduct an adjudication, and shall conduct an adjudication in accordance with subsection (b)(3) if the Attorney General so recommends.

"(C) Not later than 270 days after the effective date of the Oil Pipeline Regulatory Reform Act, the Secretary shall publish a list of all adjudications that the Secretary has determined will be held pursuant to this subsection, identifying in each case the pipeline and the market for which Commission rate regulation is sought. Pipeline rates for service to markets that are not identified in the list published by the Secretary shall no longer be subject to section 410 of this Act.

"(3)(A) The Secretary shall find that Commission rate regulation of an existing pipeline in a market is in the public interest only if it is demonstrated that regulation is necessary to constrain the exercise of substantial market power in the supply or demand of products transported by the pipeline in that market. If the Secretary finds that Commission rate regulation of an existing

pipeline in a market is in the public interest, Commission rate regulation shall continue. If the Secretary finds that Commission rate regulation of an existing pipeline in a market is not in the public interest, regulation shall terminate at a time the Secretary designates, but in no event shall that regulation continue beyond sixty days after the Secretary issues the finding.

"(B) A finding under subsection (b)(3)(A) shall be issued within one year after the Secretary decides to conduct the adjudication, unless the Secretary, in the event of unusual circumstances, determines that the finding cannot be issued within one year. In such a case, the Secretary shall make specific findings as to the unusual circumstances necessitating the delay, and shall specify a date certain by which the Secretary will issue the finding, but in no event shall the Secretary's finding be issued more than two years after the Secretary decides to conduct the adjudication.

"(C) If parties to an adjudication conducted by the Secretary reach a settlement of the issues prior to the Secretary's finding that Commission rate regulation of a pipeline in a market is in the public interest, the settlement shall bind those parties. If all parties reach such a settlement, the Secretary shall terminate the proceeding by accepting the settlement.

"(c)(1) Upon petition of any interested person, the Secretary may conduct an adjudication of whether Commission rate regulation of an existing pipeline in any market subject to that regulation is in the public interest in accordance with subsection (b)(3). The Secretary shall notify the Attorney General of any petition for adjudication or decision to conduct an adjudication under this paragraph and may consult with the Attorney General in deciding whether to conduct an adjudication.

"(2) If the Secretary finds that Commission rate regulation of an existing pipeline in a market subject to that regulation is not in the public interest, Commission rate regulation over that pipeline in that market terminates when the Secretary designates, but in no event shall Commission rate regulation continues beyond sixty days after the Secretary issues the finding.

"(d) The Attorney General may participate in any adjudication initiated by petition from any interested person under this section, or upon the request of the Secretary. In participating, the Attorney General shall be guided by the methods, assumptions, standards, and definitions set forth in the report cited in section 408(b)(2)(A).

"(e) Except as provided under subsection (i), new pipelines are not subject to existing Commission regulatory jurisdiction or to Commission rate regulation, but are subject to section 409 of this Act.

"(f)(1) The termination pursuant to this section of existing Commission regulatory jurisdiction or Commission rate regulation does not apply to products transported before the termination.

"(2) Commission rate regulation of a pipeline in a market made subject to that regulation under this section shall be prospective only. Products transported by the pipeline before regulation becomes effective under this section shall not be subject to Commission rate regulation.

"(3) Existing Commission regulatory jurisdiction terminated under this section, including existing Commission regulatory jurisdiction over new pipelines, shall not revert back to, be delegated to, or otherwise transfer to, the Department of Energy, the Interstate Commerce Commission, or any other agency of the Federal Government except as provided under subsection (i).

"(4) Notwithstanding any other law, and except as otherwise provided in section 409 and 410 of this Act, no State, political subdivision of a State, or agency of the Federal Government may regulate a pipeline with respect to which existing Commission regulatory jurisdiction or Commission rate regulation has been terminated pursuant to this section, including existing Commission regulatory jurisdiction and Commission rate regulation over new pipelines, to the extent that the regulation is similar in nature to those functions and authorities constituting existing Commission regulatory jurisdiction or Commission rate regulation that are terminated under this section. This authority includes, but is not limited to, subsections 5(e) and 5(f) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334 (e) and (f)) and section 28(r) of the Mineral Leasing Act of 1920 (30 U.S.C. 185(r)). Nothing in this Act limits any authority vested in a State or political subdivision of a State to regulate pipelines engaged in intrastate commerce.

"(g) Notwithstanding section 501 of this Act (42 U.S.C. 7191), the Secretary and the Attorney General each may promulgate, in accordance with section 553 of title 5, United States Code, rules and regulations necessary or appropriate to carry out their respective responsibilities under this section. Rules and regulations proposed by the Secretary implementing this section or any other actions taken by the Secretary under this section are not subject to section 404 of this Act (42 U.S.C. 7174).

"(h)(1) Notwithstanding section 502 of this Act (42 U.S.C. 7192), the United States Court of Appeals for the District of Columbia Circuit has exclusive original jurisdiction over any petition for judicial review under this section.

"(2) Any action of the Attorney General under this section, including without limitation any participation of the Attorney General in any adjudication under this section, is an agency action committed to agency discretion by law, and is not subject to judicial review in any manner.

"(i)(1) The Secretary of Defense may petition the Secretary for an adjudication of whether Commission rate regulation of an unregulated pipeline would be in the national defense interest, except that the Secretary of Defense may not petition the Secretary earlier than two years after—

"(A) the termination of Commission rate regulation of a pipeline that is the subject of the petition, or

"(B) a prior adjudication under this section regarding a pipeline that is the subject of the petition.

"(2) In response to a petition under this subsection, the Secretary may hold an adjudication of whether Commission rate regulation of an unregulated pipeline would be in the national defense interest. If the Secretary finds that Commission rate regulation of the pipeline is in the national defense interest, the pipeline shall be subject to section 410 of this Act.

"COMMON CARRIER STATUS CONTINUED; CONTRACTS

"SEC. 409. (a) Notwithstanding any other provision of this Act, pipelines shall operate as common carriers, as follows:

"(1) provide transportation service to all persons upon reasonable demand and upon fair, equitable, and non-discriminatory terms and conditions and establish through routes with other common carrier pipelines, except that a pipeline's charging different rates to different shippers does not constitute a violation of this paragraph;

"(2) establish and observe just and reasonable classifications of property for transportation and just and reasonable regulations and practices affecting that transportation, except that a pipeline's charging different rates to different shippers does not constitute a violation of this paragraph;

"(3) refrain from disclosing to any person, other than the shipper or consignee, without consent of the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered.

"(b) Pipelines shall publish and file with the Commission schedules setting forth applicable terms and conditions of carriage, but excluding the rates to be charged for carriage.

"(c) Contracts between pipelines and other persons on terms and conditions other than those filed pursuant to subsection (b) as applicable to basic common carriage shall be presumed conclusively to be in the public interest as long as, in regulated markets, the regulated service is available at no more than the maximum rate.

"(d) The Commission shall enforce compliance with the obligations set forth in this section, and may adopt rules and regulations necessary or appropriate for that purpose.

"COMMISSION RATE REGULATION

"SEC. 410. (a) Notwithstanding any other law, the rates of any pipeline in any market subject to this section shall be regulated as follows:

"(1) The base rates of a pipeline in any market subject to this section are;

"(A) those rates that were in effect and not subject to investigation by the Commission on January 1, 1991, increased or reduced by the percentage change in the Producer Price Index for total finished goods calculated by the Bureau of Labor Statistics in the United States Department of Labor from that date to the date that Commission rate regulation commenced pursuant to section 408(b)(1);

"(B) with respect to rates that were subject to investigation by the Commission on January 1, 1991, which investigation was not terminated by final adjudication or settlement approved by the Commission as of the termination of existing Commission regulatory jurisdiction pursuant to section 408(b)(1), those rates that were in effect upon the last rate change prior to January 1, 1991, that was not made subject to an investigation by the Commission, increased or reduced by the percentage change in the Producer Price Index from the effective date of that change to the date that Commission rate regulation commenced pursuant to section 408(b)(1);

"(C) with respect to rates that were subject to investigation by the Commission on or before January 1, 1991, which investigation was terminated by a final adjudication or a settlement approved by the Commission prior to the termination of existing Commission regulatory jurisdiction pursuant to section 408(b)(1), those finally adjudicated or settled rates, increased or reduced by the percentage change in the Producer Price Index from the effective date of the final adjudication or settlement to the date that Commission rate regulation commenced pursuant to section 408(b)(1);

"(D) with respect to pipelines not in service on January 1, 1991, those rates initially established by those pipelines.

"(2) The base rate for a pipeline subject to this section may be modified as follows—

"(A) Within 120 days after a finding by the Secretary pursuant to section 408(b) that Commission rate regulation of any pipeline in any market is in the public interest, the Attorney General may petition the Secretary for an adjudication of whether any base rate of that pipeline in that market should be reduced. Upon receipt of such a petition, the Secretary shall conduct an adjudication in accordance with subsection (a)(2)(D) of this section.

"(B) Within 180 days after a public interest finding, an interested person may petition the Secretary for an adjudication of whether any base rate of that pipeline in that market should be reduced. A person filing such a petition shall provide a reasonable basis for the conclusion that the base rate should be reduced, and shall serve a copy of the petition on the Attorney General and on the pipeline that is the subject of the petition. Upon receipt of such a petition, the Secretary, for good cause shown, may conduct an adjudication in accordance with subsection (a)(2)(D). The Secretary may consult with the Attorney General in deciding whether to conduct an adjudication, and shall conduct an adjudication if the Attorney General so recommends.

"(C) Not later than 270 days after a public interest finding, the Secretary shall publish a list of all adjudications that the Secretary has determined will be held pursuant to this paragraph, identifying in each case the pipeline, the market, and the base rate for which a reduction is sought.

"(D)(i) The Secretary shall order a reduction if the petitioner demonstrates that the pipeline's market power has resulted in a base rate that is significantly higher than the rate likely would be if the relevant market were not subject to market power. In making this finding, the Secretary shall consider only statistical evidence of rates charged by that pipeline in competitive markets, with appropriate recognition of the effects of factors such as the distance of a movement. For purposes of this subparagraph, a base rate is considered significantly higher than the rate likely would be if the relevant market were not subject to market power only if the difference is statistically significant under commonly accepted standards.

"(ii) A finding under clause (i) of this subparagraph shall be issued within one year after the Secretary decides to conduct an adjudication, unless the Secretary, in the event of unusual circumstances, determines that the finding cannot be issued within one year. In such a case, the Secretary shall make specific findings as to the unusual circumstances necessitating the delay, and shall specify a date certain by which the Secretary will issue the finding, but in no event shall the Secretary's finding be issued more than two years after the Secretary decides to conduct the adjudication.

"(iii) If parties to an adjudication conducted by the Secretary reach a settlement of the issues prior to the Secretary's finding, it shall bind those parties. If all parties reach such a settlement, the Secretary shall terminate the proceeding by accepting the settlement.

"(E) Any adjustment of a base rate ordered under this subsection shall be effective as of the date of the Secretary's finding pursuant to subsection (a)(2)(D)(ii).

"(F) The Attorney General may participate in any adjudication initiated by petition from any interested person under this section, and shall participate upon the request of the Secretary. In participating, the Attorney General shall be guided by the methods, assumptions, standards, and definitions set forth in the report cited in section 408(b)(2)(A).

"(3) The Commission shall calculate as follows a maximum rate for each rate subject to Commission rate regulation:

"(A) Following the commencement of Commission rate regulation pursuant to subsection 408(b)(1)—

"(i) For the first period, which shall be from the commencement of Commission rate regulation pursuant to subsection 408(b)(1) until the date of publication by the Secretary of the list of adjudications required by subsection 408(b)(2)(C), the maximum rate shall be the base rate established under section 410 (a)(1) and (2).

"(ii) For each of the next two periods, each of which shall be six months, the maximum rate for pipeline rates serving markets which are subject to an adjudication shall be the base rate increased or reduced by the percentage change in the Producer Price Index from the date upon which the base rate became effective.

"(iii) For all subsequent six month periods, the maximum rate shall be the prior maximum rate increased or reduced by the percentage change in the Competitive Pipeline Price Index during the previous period, except that, with respect to a settlement approved by the Commission after January 1, 1991, which expressly governs maximum rates for any future period, the settlement rate shall be the maximum rate until the conclusion of that period. At the conclusion of that period, the rate in effect shall be the maximum rate increased or reduced by the percentage change in the Competitive Pipeline Price Index.

"(B)(i) The Secretary shall calculate a Competitive Pipeline Price Index to reflect relative changes in prices changed by pipelines in competitive markets not subject to Commission rate regulation. The Competitive Pipeline Price Index shall be derived from the average revenue per barrel-mile of a sample of pipelines in those markets. The Secretary shall select the sample of pipelines, markets, and revenues to be used in calculating the Competitive Pipeline Price Index, and the Secretary may exclude data from pipelines not subject to Commission rate regulation but whose rates for any reason may not reflect effective competition. The Secretary may require reports from pipelines for the purpose of calculating the Competitive Pipeline Price Index.

"(ii) The Secretary shall initially publish the Competitive Pipeline Price Index one year after the termination of existing Commission regulatory jurisdiction, and shall publish changes in it at intervals of not more than six months.

"(iii) The Secretary may substitute an appropriate existing index for the Competitive Pipeline Price Index if that substitute index accurately reflects increases in prices in competitive pipeline markets and if the Secretary determines that calculation of the Competitive Pipeline Price Index would be unduly burdensome.

"(4)(A) Any rate subject to Commission rate regulation under this section which does not exceed the maximum rate determined in accordance with subsection (a)(3) of this section is presumed conclusively to be lawful and is not subject to protest, complaint, suspension, investigation, or any other challenge or inquiry under Commission rate regulation.

"(B) Nothing in this Act makes it unlawful for a pipeline to charge a rate that is lower than the maximum rate determined in accordance with subsection (a)(3). A pipeline charging lower than the maximum rate to a shipper with which it is affiliated by means of common ownership or otherwise shall make the lower rate available to any shipper upon the same terms and conditions of service.

"(5) The Commission shall publish base rates, rate adjustments, and maximum rates determined in accordance with this section and make them available for public inspection.

"(b) A pipeline subject to Commission rate regulation in a market shall not condition pipeline services in that market on entering into any other transaction, or on taking or refraining from any action.

"(c)(1) In any market subject to Commission rate regulation, if a pipeline expands its available capacity, it may petition the Commission for a determination of the pre-existing capacity that will remain subject to Commission rate regulation. If such a determination is made, the additional capacity shall not be subject to Commission rate regulation. Interested persons may participate in the proceeding.

"(2) The Commission may promulgate any regulations necessary or appropriate to ensure that rights to use pre-existing capacity at rates governed by Commission rate regulation are allocated to shippers in a manner that both preserves the efficacy and is consistent with the requirements of section 409 of this Act.

"(d) The Commission shall enforce compliance with the obligations set forth in this section, and may adopt rules and regulations necessary or appropriate for that purpose.

"(e) Notwithstanding section 501 of this Act (42 U.S.C. 7191), the Secretary and the Attorney General each may promulgate in accordance with section 553 of title 5, United States Code, rules and regulations necessary or appropriate to carry out their respective responsibilities under this section. Rules and regulations proposed by the Secretary implementing this section or any other actions taken by the Secretary under this section are not subject to section 404 of this Act (42 U.S.C. 7174).

"(f)(1) Notwithstanding section 502 of this Act (42 U.S.C 7192), the United States Court of Appeals for the District of Columbia Circuit has exclusive original jurisdiction over any petition for judicial review under this section.

"(2) Any action of the Attorney General under this section, including without limitation any decision to petition or not to petition for an adjudication under this section, is an agency action committed to agency discretion by law, and is not subject to judicial review in any manner.

"REPORT TO CONGRESS

"SEC. 411. At the conclusion of the fifth year after the completion of all adjudications conducted under section 410 of this Act, the Secretary shall provide to the appropriated committees of Congress a report setting forth the findings and conclusions of the Secretary on the results of the Oil Pipeline Regulatory Reform Act and its impact on the public interest. In this report, the Secretary shall make any recommendations that the Secretary considers appropriate.".

CONFORMING AMENDMENTS

"SEC. 354. (a) Section 402(b) of the Department of Energy Organization Act (42 U.S.C 7172(b)), is amended by striking "There" and inserting in its place "Subject to sections 408, 409, 410, and 411 of this Act, there".

"(b) Section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7174(a)) is amended by striking "section 403" and by inserting in its place "sections 408 and 410".

"(c) The Table of Contents of the Department of Energy Organization Act is amended by adding after the item for section 407 four new items as follows: "Sec. 408. Regulation of pipelines.", "Sec. 409. Common carrier status continued; contracts.", "Sec. 410. Commission rate regulation.", and "Sec. 411. Report to Congress.".

APPLICABILITY OF ANTITRUST LAWS

"SEC. 355. Nothing in this Act affects the applicability to the transportation by pipeline of crude oil, refined oil, or other petroleum products of the laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade.

SEVERABILITY

"SEC. 356. In any provision of this Act or its application to any person or circumstances is held invalid, neither the remainder of this Act nor the application of the provision to other persons or circumstances shall be affected.

TITLE IV—ELECTRICITY GENERATION AND USE

Subtitle A—Public Utility Holding Company Act Reform

DEFINITIONS

"SEC. 401. For the purposes of this subtitle—

(1) "Exempt wholesale generator" means any person who is engaged directly, or indirectly, through one or more of that person's affiliates as defined under section 2(a)(11)(B) of the Act, exclusively in the business of owning or operating all or part of one or more eligible facilities and selling electric energy at wholesale. The term excludes a registered holding company affiliate in existence on the date of enactment of the National Energy Strategy Act, unless the Commission has consented to its inclusion.

(2) "Eligible facility" means a facility, wherever located, that is used for the generation of electric energy exclusively for sale at wholesale (including interconnecting transmission facilities necessary to effect sale at wholesale). For purposes of sections 401 and 402, "facility" includes a portion of a facility. This term does not include a facility if a rate or a charge for, or in connection with, its construction or for electricity it produces (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge) is in effect under the laws of any State.

(3) "Electric consumer" means any person, State or local authority or agency, or Federal agency to which electric energy is sold other than for purposes of resale.

(4) As used in sections 401 and 402, "the Act" means the Public Utility Holding Company Act. All of the terms used in sections 401 and 402 and defined in the Act have the meaning given in the Act.

EXEMPT WHOLESALE GENERATORS

SEC. 402. (a) An exempt wholesale generator is not considered an "electric utility company" under section 2(a)(3) of the Act and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, is exempt from the Act.

(b) Notwithstanding any provision of the Act, the eligibility of a holding company for exemption under section 3(a) of the Act is not affected by whether an associate company, affiliate, or subsidiary company is an exempt wholesale generator, unless the Commission, by order upon application of an affected State commission or other interested party, and considering among other relevant factors any views submitted by each affected State commission, terminates the exemption upon determining that—

(1) the holding company has not established appropriate means to determine the allocation of costs between the exempt wholesale generator and any associate company, affiliate, or subsidiary company that provides electric service to electric consumers; or

(2) the exempt wholesale generator is a party to a contract, either directly or through an associate company, for the sale of electric energy to an associate company, affiliate, or subsidiary company that provides electric service to electric consumers without each affected State commission having given its prior approval of the contract under State law.

(c) For the purposes of this section, an "affected State commission" is any State commission that has jurisdiction to regulate a holding company's associate company, affiliate, or subsidiary company that provides electric service to electric consumers.

(d) Notwithstanding any provision of the Act and the Commission's jurisdiction under subsection (e) of this section, a registered holding company may acquire and hold, directly or indirectly, the securities, or interest in the business, of one or more exempt wholesale generators without applying for or receiving approval from the Commission and without being subject to any other conditions under the Act, so long as the exempt wholesale generator is not a party to a contract, either directly or through an associate company, for the sale of electric energy to an associate company, affiliate, or subsidiary company that provides electric service to electric consumers, unless each affected State commission has given its prior approval of the contract under State law.

(e) The direct or indirect issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator; the direct or indirect guarantee of securities of an exempt wholesale generator by a registered holding company; the direct or indirect entering into service, sales, or construction contracts; and the direct or indirect creation or maintenance of any other relationship in addition to that described in subsection (d) between an exempt wholesale generator and a registered holding company, its affiliates, and associate companies, remain subject to the jurisdiction of the Commission under the Act, except that—

(1) section 11 of the Act does not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of the location of facilities owned or operated by the exempt wholesale generator), and that ownership is considered to be consistent with the operation of an integrated public utility system; and

(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of the location of facilities owned or operated by the exempt wholesale generator) is considered to be reasonably incidental, or economically necessary or appropriate to the operations of an integrated public utility system.

OWNERSHIP OF EXEMPT WHOLESALE GENERATORS AND QUALIFYING FACILITIES

SEC. 403. The ownership by a person of one or more exempt wholesale generators does not result in that person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act (16 U.S.C. 796(17)(C)(ii) and (18)(B)(ii)).

FEDERAL AND STATE AUTHORITIES

SEC. 404. (a) A rate or charge for the sale of electric energy at wholesale in interstate commerce by an exempt wholesale generator is not considered just and reasonable within the meaning of sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) if the rate or charge allows the exempt wholesale generator to receive undue advantage from the existance of an affiliate relationship between the exempt wholesale generator and the purchaser of that electric energy.

(b) A State commission may determine the prudence of a wholesale power purchase by an electric utility company that provides electric service to electric consumers and may disallow recovery of costs determined to be imprudently incurred, unless the wholesale purchaser has no alternative to accepting the amount of power or costs allocated to it by the Federal Energy Regulatory Commission in setting a wholesale rate or charge that is based on an allocation of power or costs among:

(i) companies of a registered holding company; or

(ii) companies that operate on an integrated basis under an agreement approved by the Federal Energy Regulatory Commission.

Subtitle B—Power Marketing Administration Repayment Reform

SHORT TITLE

SEC. 411. This subtitle may be cited as the Power Marketing Administration Timely Payment Act.

DEFINITIONS

SEC. 412. For purposes of this subtitle—

(1) "Power marketing administration" means the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

(2) "Power investment" means a capital investment or other capitalized expenditure made by the United States that—

(A) is made using Federal appropriations;

(B) is for a project or separable feature of a project that is placed in service;

(C) is allocated to power and required by law to be repaid from the power revenues of a power marketing administration;

(D) is not allocated or suballocated to irrigation; and

(E) excludes an investment made using funds borrowed under section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k).

(3) "Interest rate" means:

(A) for power investments placed in service after September 30, 1991, a rate determined by the Secretary of the Treasury based on the average market yields on outstanding marketable obligations of the United States with the remaining periods to maturity comparable to the applicable repayment period during the month proceding the fiscal year in which the power investment is placed in service; and

(B) for power investments placed in service before October 1, 1991, the yield of long-term government securities for the year the power investment was placed in service, as shown in the following table:

Year	Yield
1921	5.09

Year	Yield
1922	4.30
1923	4.36
1924	4.06
1925	3.86
1926	3.68
1927	3.34
1928	3.33
1929	3.60
1930	3.29
1931	3.34
1932	3.68
1933	3.31
1934	3.12
1935	2.79
1936	2.65
1937	2.68
1938	2.56
1939	2.36
1940	2.21
1941	1.95
1942	2.46
1943	2.47
1944	2.48
1945	2.37
1946	2.19
1947	2.25
1948	2.44
1949	2.31
1950	2.32
1951	2.57
1952	2.68
1953	2.95
1954	2.55
1955	2.84
1956	3.08
1957	3.47
1958	3.43
1959	4.07
1960	4.02
1961	3.90
1962	3.95
1963	4.00
1964	4.15
1965	4.21
1966	4.65
1967	4.85
1968	5.26
1969	6.12
1970	6.58
1971	5.74
1972	5.64
1973	6.31
1974	6.98
1975	7.00
1976	6.78
1977	7.06
1978	7.89
1979	8.74
1980	10.81
1981	12.87
1982	12.23
1983	10.84
1984	11.99
1985	10.75
1986	8.14
1987	8.63
1988	8.98
1989	8.59
1990	8.50
1991	8.50

(4) "Compound-interest repayment schedule" means a series of level annual payments of the principal and interest on the power investment paid over the repayment period. For each power investment, the level annual payment of principal and interest is derived by dividing the unpaid principal balance of the power investment by the interest factor for the present value of an annuity.

REPAYMENT OF PRINCIPAL

SEC. 413. (a) Notwithstanding any other law, each power marketing administration shall provide for timely repayment to the Treasury of the United States of principal for power investments. A repayment of principal, to be made at or before the end of each fiscal year, shall be in an amount that is not less than would be determined under a compound-interest repayment schedule as defined in section 412(4) for each power investment, with the schedule beginning on October 1, 1991, or the date the investment is placed in service, whichever is later. In computing the compound-interest repayment schedule—

(1) for each power investment placed in service after September 30, 1991, the repayment period for the unpaid power investment is the estimated average service life of the investment, as determined by the power marketing administration, not to exceed 50 years; and

(2) for each power investment placed in service before October 1, 1991, the repayment period for the unpaid power investment is the remaining average service life of the power investment or the number of years remaining in a 50 year repayment period which started on the date the power investment was placed in service, whichever is less.

(b) If in any year the principal payments made are more than the annual scheduled amounts, the excess payments shall be credited toward payments required in subsequent years. Until a power marketing administration, at its discretion, credits the excess payment toward payments in subsequent years, the excess payment accrues an interest credit at a rate as calculated in section 414(c).

(c) Bonneville Power Administration's payments of principal as specified by this section and interest as specified by section 414 of this Act are payable exclusively from Bonneville Power Administration's "net proceeds" as that term is defined in section 13(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838k(b)), after deducting Bonneville Power Administration's payments under section 11(b)(8) of the Federal Columbia River Transmission System Act (16 U.S.C. 838i(b)(8)).

PAYMENT OF INTEREST

SEC. 414. (a) Notwithstanding any other law, each power marketing administration shall provide for the timely payment to the Treasury of the United States, at or before the end of each fiscal year, of interest on the unpaid principal of power inyestments, and of interest on any unpaid deferrals of principal and interest payments.

(b) The annual interest payments on the unpaid principal of power investments shall be computed based on the interest rate determined under section 412(3).

(c) If in any year the interest or principal payments made are less than the amounts scheduled under this Act, the shortfall shall be accounted for separately and paid before the scheduled payment in subsequent fiscal years together with interest calculated at a rate 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 in which the shortfall occurred. A shortfall in principal or interest payments shall not affect the payment schedule for subsequent years, except as provided in section 415.

CHANGING A SCHEDULE OF PAYMENTS

SEC. 415. Notwithstanding any other law, a power marketing administration may establish a new schedule of payments of principal and interest on an unpaid power investment when there is a significant reduction in the availability of hydro-power resources because of unexpected natural events. Before changing a schedule of payments, in whole or in part, a power marketing administration shall submit a justification for the change to the Federal Energy Regulatory Commission for approval. Within 30 days from receipt of all necessary justification documents, the Federal Energy Regulatory Commission shall approve or reject a power marketing administration's request for a change in the schedule of payments. Interest on a rescheduled payment, even if the rescheduling is approved by the Federal Energy Regulatory Commission, shall be paid in accordance with section 414 of this Act. This section does not apply to the Bonneville Power Administration.

EFFECTIVE DATE

SEC. 416. This subtitle takes effect October 1, 1991.

TITLE V—NUCLEAR POWER

Subtitle A—Licensing Reform

COMBINED LICENSES

SEC. 501. (a) Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by—

(1) adding "and Operating Licenses" after "Permits" in the catchline;

(2) adding a subsection designator "a." before "All"; and

(3) adding the following new subsections:

"b.(1) After holding a public hearing under section 189 of this Act, the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses that the licensee shall perform, and the acceptance criteria that the Commission shall use to determine their satisfactory completion.

"(2)(A) An application for a combined license shall include a State, local, or utility emergency plan. The combined license shall identify the inspections, tests, exercises, and analyses required for the emergency plan and the acceptance criteria for their satisfactory completion.

"(B) In finding reasonable assurance that adequate protective measures can and will be taken in a radiological emergency, the Commission may presume that States and localities in the emergency planning zones will use best efforts to protect their citizens by following an emergency plan determined by the Commission to be adequate.

"(C) Notwithstanding paragraph (4) of this subsection, questions which arise after combined license issuance, concerning offsite emergency planning issues relating to whether there is reasonable assurance of adequate protective measures including those from a decision by a State or locality not to participate in a previously approved State, local or utility plan, may be resolved only in a proceeding, either in response to a petition or at the initiative of the Commission, to modify or suspend operation under the combined license.

"(3) At appropriate intervals during construction or preoperational testing, the Commission shall publish in the Federal Register notices of the successful completion of inspections, tests, and analyses.

"(4)(A) Not less than 120 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined license, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 30 days request the Commission to hold a hearing on whether the facility as constructed complied, or on completion will comply, with the acceptance criteria of the license.

"(B) A request for a hearing under this paragraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not

be, met, and the specific operational consequences of nonconformance that would be contrary to adequate protection of the public health and safety.

"(C) After receiving a request for a hearing under this paragraph, the Commission expeditiously shall either deny or grant the request. If a hearing is held, commencement of plant operation shall not be delayed pending decision after hearing unless the Commission determines, after considering petitioners' prima facie showing and any answers thereto, that petitioners are likely to succeed on the merits and, as a result, there will not be adequate protection of the public health and safety in the interval prior to the decision.

"(D) A hearing under this paragraph shall be informal, but parites shall be allowed to offer evidence, under oath or affirmation. Discovery and cross-examination of witnesses are not permitted, but the presiding official may direct questions to any party.

"(E) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 120 days of the publication of the notice provided by subparagraph (A) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to section 189(a)(1), but any final order of the Commission under this paragraph is subject to judicial review as provided in section 189(b).

"(5) The Commission also shall notify the Attorney General if significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under section 105 c. in connection with issuance of the combined construction and operating licenses for the facility so as to warrant further review under that section under such procedures as may be established by the Commission.

"c. In acting on a request by the holder of a combined license for an amendment to the combined license, the Commission shall apply the same procedures and criteria as it would under section 189(a) of this Act to a licensee request for an amendment to an operating license for a utilization facility. The Commission shall not delay preoperational activities or operation of a facility pending completion of a proceeding under this paragraph if the Commission determines that the amendment involves no significant hazards considerations.".

RULEMAKING

SEC. 502. The Nuclear Regulatory Commission shall propose regulations implementing this subtitle of the National Energy Strategy Act within 1 year of the date of its enactment.

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 503. (a) Section 105 c.(2) of the Atomic Energy Act of 1954 is amended by inserting "or both construct and operate" after "operate" the first time it appears.

(b) Subsection 182 b. of the Atomic Energy Act of 1954 is amended to read as follows:

"b. The Advisory Committee on Reactor Safeguards shall review:

"(1) an application under section 103 or section 104 b. for a construction permit, an operating license, or a combined construction and operating license for a facility;

"(2) an application under section 104 c. for a construction permit or an operating license for a testing facility;

"(3) an application under section 104 a. or c. specifically referred to it by the Commission; or

"(4) an application for an amendment to a construction permit, to an operating license, or to a combined construction and operating license under section 103 or 104 a., b., or c. specifically referred to it by the Commission;

The Advisory Committee on Reactor Safeguards shall submit a report on the application which shall be made a part of the record of the application and be made available to the public except to the extent that security classification prevents disclosure.".

(c) Section 186 a. of the Atomic Energy Act of 1954 is amended by inserting "and 185," after "sections 182,".

(d) The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 prec.) is amended by amending the item relating to section 185 to read as follows: "Sec. 185. Construction Permits and Operating Licenses.".

EFFECT ON PENDING PROCEEDINGS

SEC. 504. Sections 501 through 503 of this Act apply to all proceedings pending before the Nuclear Regulatory Commission On the date of enactment of this Act.

Subtitle B—Nuclear Waste Management

REPOSITORY SITE CHARACTERIZATION

SEC. 511. Section 113(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(a)) is amended to read as follows:

"(a) IN GENERAL.—(1) The Secretary shall carry out, in accordance with this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 112(b)(2) of this Act and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in those comments or in the environmental assessment submitted under subsection (b)(1) of this section.

"(2) Notwithstanding any other law, for the purpose of site characterization activities, a Federal agency administering a law, ordinance, or regulation that imposes a requirement for a permit, license, right of way, certification, approval, or other authorization, shall administer the application of that law, ordinance, or regulation to site characterization activities conducted by the Secretary under this Act without regard to whether its administration has been, or could be, delegated to a State or superseded by a comparable State law.

"(3)(A) A requirement for a permit, license, right of way, certification, approval, or other authorization imposed by a State, local, or tribal law, ordinance, or regulation does not apply to site characterization activities under this Act.

"(B) The Secretary shall carry out site characterization activities under this Act notwithstanding a denial of, or refusal to act on, an application for a permit, license, right of way, certification, approval, or other authorization required by a State, local, or tribal law, ordinance, or regulation.

"(4) Notwithstanding paragraph (3), in carrying out site characterization activities under this Act, the Secretary shall consider the views of State, local, and tribal officials regarding the substantive provisions of State and local laws, ordinances, and regulations.

"(5) An action to contest the constitutionality of a provision of this subsection must be brought within 60 days of the date of the enactment of the National Energy Strategy Act. A court may not enjoin site characterization activities carried out by the Secretary under this Act in an action brought to contest the constitutionality of a provision of this subsection except as part of a final judgment.

"(6) Paragraphs (2), (3), (4), and (5) of this subsection apply only to site characterization activities conducted or begun before the Secretary submits to the Commission under section 114(b) of this Act (42 U.S.C. 10134(b)) an application for a construction authorization for a repository.

"(7) The exclusion or inclusion of any provisions contained in paragraphs (2), (3), (4), or (5) of this subsection in a negotiated proposed agreement developed under title IV of this Act shall not affect any determinations regarding either the reasonableness or appropriateness of such an agreement.".

MONITORED RETRIEVABLE STORAGE FACILITY

SEC. 512. Sections 145(b) and 148(d) (1) and (2) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 1065(b) and 1068(d) (1) and (2)) are repealed.

TITLE VI—RENEWABLE ENERGY

Subtitle A—Purpa Size and Cap and Co-firing Reform

FEDERAL POWER ACT DEFINITIONS

SEC. 601. Section 3(17) of the Federal Power Act (16 U.S.C. 796(17)) is amended—

(1) by amending paragraph (A) to read as follows:

"(17)(A) small power production facility means a facility which—

"(i) is an eligible solar, wind, waste, biomass, hydroelectric, or geothermal facility;

"(ii) is an alternative power production facility; or

"(iii)(I) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination of those energy sources; and

"(II) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;";

(2) in paragraph (E)—

(A) by inserting ", biomass, hydroelectric," after "waste" the first time it appears; and

(B) by striking "or geothermal resources, and which would otherwise not qualify as a small power production facility because of the power production capacity limitation contained in subparagraph (A)(ii)" and inserting ", biomass energy, hydroelectric power, or geothermal resources, regardless of power production capacity" in its place; and

(3) by adding the following paragraph:

"(F) alternative power production facility means a facility, regardless of power production capacity, which produces electric energy by using solar energy, wind energy, waste resources, biomass energy, hydroelectric power, or geothermal resources, but only if—

"(i) either an application for certification of the facility as a qualifying small power production facility or a notice that the facility meets the requirements for qualification is submitted to the Commission;

"(ii) the electric capacity of the facility is acquired through competitive acquisition; and

"(iii) at least fifty percent of the energy source used to produce electric energy is obtained through the use of solar, wind, waste, biomass, hydroelectric power, geothermal resources, or any combination of those energy sources.".

UTILITY PURCHASING AND EXEMPTIONS

SEC. 602. Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended—

(A) by striking "and to encourage geothermal small power production facilities of not more than 80 megawatts capacity,"; and

(B) by inserting "In the case of an alternative power production facility, these rules shall require electric utilities to offer to purchase electric capacity from such a facility only through competitive acquisition." after "resale.";

(2) in subsection (e)(2) by striking "other than a qualifying small power production facility which is an eligible solar, wind, waste, or geothermal facility as defined in section 3(17)(E) of the Federal Power Act" and inserting "Other than a qualifying small power production facility which is an alternative power production facility or an eligible solar, wind, waste, biomass, hydroelectric, or geothermal facility" in its place; and

(3) in subsection (1) by inserting "'alternative power production facility", "eligible solar, wind, waste, biomass, hydroelectric, or geothermal facility", "competitive acquisition"," after "'qualifying small power producer"."

Subtitle B—Hydroelectric Power Regulatory Reform

REGULATORY REFORM

SEC. 611. Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by—

(1) inserting ", and for the purposes of subsections (h), (i), and (j), the Commission shall" after "empowered"; and

(2) adding the following after subsection (g):

"(h) Require each applicant who files an application for a license under this part after December 31, 1992, before filing the application to consult, concerning studies to be undertaken in connection with the licensing process, with those Federal and State agencies and Indian tribes the Commission requires to be consulted and then to have the applicant submit to the Commission a plan and schedule for conducting the studies and a summary of its consultation activities. The Commission shall approve or modify the plan and schedule taking into consideration the cost of the studies, the potential value to the licensing determination of the information the studies are likely to produce, and any other factors the Commission considers relevant and shall ensure that the plan includes all studies necessary to evaluate and proposed projects. Once a plan is approved by the Commission, the Commission may modify it only after determining that the public interest would be affected if it were not modified. This determination may include a finding that additional information is needed in order to address the provisions of this Act or other applicable law. Approval of the study plan and schedule does not constitute a formal Commission decision and is not subject to appeal.

"(i) Coordinate a single, consolidated review, including review under the National Environmental Policy Act of 1969, of a hydropower project which is the subject of an application for a license under this part, by all Federal agencies, State agencies and affected Indian tribes interested in the project that is the subject of the application. The Commission shall give reasonable notice of the application and the consolidated review to all Federal agencies, State agencies, and affected Indian tribes that may be interested in the project that is the subject of the application. The Commission shall be the lead agency for purposes of compliance with the National Environmental Policy Act of 1969. A review under the National Environmental Policy Act of 1969 completed by the Commission as part of the consolidated review is the only documentation needed by an agency to satisfy the requirements of the National Environmental Policy Act of 1969 for the project subject to the review. The Commission's decision concerning issuance of a license and the terms, conditions, and prescriptions of the license shall take into account the results of the consolidated review. An agency's decision concerning its recommendations, terms, conditions, and prescriptions for the license and any approvals within its authority related to the project shall take into account the results of the consolidated review. The Commission may establish reasonable time limits for submission of recommendations, terms, conditions, prescriptions, and reports by the Federal agency, State agency, or Indian tribe as part of the consolidated review. If an agency does not meet the Commission's time limitations, the Commission may continue to process and to take any appropriate action on the application.

"(j)(1) Notwithstanding any other provision of the Act or other law, have exclusive authority to determine which recommendations, terms, conditions, prescriptions permits, and certification are included in a license issued under this part for a hydropower project at an existing dam or conduit. If the Commission does not adopt in whole or part a recommendation, term, condition, prescription, permit, or certification promulgated by a Federal or State agency or an Indian tribe, the Commission shall state fully its reasons for its action.

"(2) If there is a conflict between the terms of a license issued under this part for a hydropower project at an existing dam or conduit and the terms of a permit, license, certificate, or other authorization required by another Federal agency or a State agency for the same project, the terms of the license issued under this part prevail. If the hydropower project at an existing dam or conduit has been issued a license under this part and has been denied a permit, license, certificate, or other authorization by another Federal agency or a State agency, the licensee of the project may proceed under the license issued under this part.".

REMOVAL OF COMMISSION AUTHORITY OVER FIVE MEGAWATT PROJECTS

SEC. 612. Section 10(i) of the Federal Power Act (16 U.S.C. 803(i)) is amended to read as follows:

"(i)(1) A constructed or proposed hydropower project with an installed capacity of five megawatts or less that has not received a license under this part by the effective date of the National Energy Strategy Act is not subject to this part.

"(2) The licensee of a project with an installed capacity of five megawatts or less licensed under this part as of the effective date fo the National Energy Strategy Act may elect not to be regulated under this part by applying to the Commission for permission to surrender the license. The Commission shall permit surrender of the license unless the Commission determines it is not in the public interest to do so.

"(3) Notwithstanding this subsection, section 401 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341) applies to a project with an installed capacity of five megawatts or less as it did before the date of enactment of the National Energy Strategy Act.".

TITLE VII—ALTERNATIVE FUEL

Subtitle A—Alternative and Dual Fuel Vehicle Credits

ALTERNATIVE AND DUAL FUEL CAP REMOVAL

SEC. 701. Section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) is amended to read as follows:

"CONSIDERATION OF CERTAIN AUTOMOBILES

"SEC. 513. In carrying out section 2002(a)(4) and (f) of this title, the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated exclusively on gasoline or diesel fuel.".

Subtitle B—Alternative Transportation Fuels

DEFINITIONS

SEC. 711. For the purpose of this subtitle—

(1) "alternative fuel" means methanol, ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, ethanol, or other alcohol with gasoline or other fuels; natural gas; liquid petroleum gas; hydrogen; and electricity;

(2) "alternative fuel vehicle" means a motor vehicle that—

(A) operates solely on alternative fuel, or

(B) is a flexi-fueled vehicle;

(3) "covered person" means a person to whom section 712 of this subtitle applies;

(4) "fleet" means a number of motor vehicles, all or a part of which are centrally fueled or capable of being centrally fueled, that are owned, operated, leased, or otherwise controlled by a person. This term does not include—

(A) motor vehicles held for daily lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement vehicles;

(E) emergency vehicles;

(F) military tactical vehicles; or

(G) non-road vehicles, including farm and construction vehicles;

(5) "flexi-fueled vehicle" means a motor vehicle that can operate on alternative or non-alternative fuel;

(6) "person" has the meaning given that term in section 1 of title 1, United States Code, but also includes a State government and a local government;

(7) "Secretary" means the Secretary of Energy; and

(8) "urban bus" has the meaning given that term in section 219 of the Clean Air Act (42 U.S.C. 7554).

ACQUISITION OF ALTERNATIVE FUEL VEHICLES

SEC. 712. (a)(1) This subsection applies to a person who owns, operates, leases, or otherwise controls a fleet that—

(A)(i) contains at least—

(I) 10 automobiles;

(II) 10 trucks, except multi-unit trucks over 26,000 pounds gross vehicle weight; or

(III) 10 buses, except intercity passenger buses and urban buses; or

(IV) a combination of at least 10 motor vehicles of these types; and

(ii) is located in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, which has been classified by the Environmental Protection Agency under part D of title I of the Clean Air Act as a serious, severe or extreme nonattainment area for ozone based on 1987, 1988, and 1989 data; or

(B)(i) contains at least—

(I) 20 automobiles;

(II) 20 trucks, except multi-unit trucks over 26,000 pounds gross vehicle weight;

(III) 20 buses, except intercity passenger buses and urban buses; or

(IV) a combination of 20 motor vehicles of these types; and

(ii) is located in any metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000.

(2) When a person to whom this subsection applies under paragraph (1) purchases, leases, or otherwise acquires vehicles for the fleet described in paragraph (1), in the years specified in this paragraph, the following percentage of the vehicles purchased, leased, or otherwise acquired shall be alternative fuel vehicles in the respective years—

(A) in 1995, 10 percent;

(B) in 1996, 15 percent;

(C) in 1997, 25 percent;

(D) in 1998, 50 percent;

(E) in 1999, 75 percent; and

(F) in 2000 and afterwards, 90 percent.

(b)(1) This subsection applies to a person who owns, operates, leases, or otherwise controls a fleet that—

(A)(i) contains at least 10 urban buses, except intercity passenger buses, and

(ii) is located in an area described in subsection (a)(1)(A)(ii) of this section, or

(B)(i) contains at least 20 urban buses, except intercity passenger buses, and

(ii) is located in an area described in subsection (a)(1)(B)(ii) of this section.

(2) When a person to whom this subsection applies under paragraph (1) purchases, leases, or otherwise acquires vehicles for the fleet described in paragraph (1), in the years specified in this paragraph, the following percentage of the vehicles purchased, leased, or otherwise acquired shall be alternative fuel vehicles in the respective years—

(A) in 2000, 50 percent;

(B) in 2001, 75 percent;

(C) in 2002, 80 percent; and

(D) in 2003 and thereafter, 90 percent.

EXCEPTION

SEC. 713. This subtitle does not apply to a covered person if the Secretary determines that no alternative fuel vehicles meeting the fleet requirements for that person are available for purchase, lease, or acquisition by other means when the subtitle becomes applicable to the covered person. This subtitle applies to that covered person when alternative fuel vehicles become available. This subtitle does not apply to a person subject to section 712(b) if the Secretary determines that no alternative fuel vehicle that is an urban bus complies with the warranty standards for urban buses.

CREDITS

SEC. 714. (a) The Secretary shall allocate a credit to a covered person if that person purchases an alternative fuel vehicle in excess of the number that person is required to purchase under this subtitle or purchases an alternative fuel vehicle before the date that person is required to purchase an alternative fuel vehicle under this subtitle.

(b) In allocating credits under subsection (a), the Secretary shall allocate one credit for each alternative fuel vehicle the covered person purchases that exceeds the number of alternative fuel vehicles that person is required to purchase under this subtitle or that is purchased before the date that person is required to purchase an alternative fuel vehicle under this subtitle. The credit shall be allocated for the same type of vehicle, including an urban bus, automobile, or other vehicle subject to the requirements of this subtitle, as the excess vehicle or earlier purchased vehicle.

(c) At the request of a covered person allocated a credit under this section, the Secretary shall treat the credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by that person when determining whether that person has complied with this subtitle in the year designated. A credit may be counted toward compliance for only one year.

(d) A covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another person who is required to comply with this subtitle. At the request of the person to whom a credit is transferred, the Secretary shall treat the transferred credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by the person to whom the credit is transferred when determining whether that person has complied with this subtitle in the year designated. A transferred credit may be counted toward compliance for only one year.

REPORTS

SEC. 715. The Secretary may require a person to file with the Secretary the reports the Secretary determines necessary to implement this subtitle.

ENFORCEMENT

SEC. 716. (a) A person who violates a requirement or prohibition of this subtitle is subject to a civil penalty of not more than $100,000 per violation. Each month in which a violation occurs constitutes a separate violation, unless the violator establishes that the vehicle necessary to comply with this subtitle could not be purchased, leased, or otherwise acquired in that month. The first month of a violation of the yearly acquisition requirements of section 712 is the month in which a person purchases, leases, or otherwise acquires vehicles that result in noncompliance with the yearly alternative fuel vehicles purchase requirement under that section. Each month in which compliance has not been achieved after the first month is a separate violation.

(b) The Secretary may request the Attorney General to commence a civil action for a permanent or temporary injunction or to assess and recover any civil penalty under subsection (a) of this section. An action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has his principal place of business. The court in which the action has been brought may restrain a violation, require compliance, assess a civil penalty, collect any noncompliance assessment and nonpayment penalty owned the United States, and award any other appropriate relief. In such an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c)(1) Instead of commencing a civil action under subsection (b), the Secretary may assess an administrative penalty in the amount prescribed in subsection (a) of this section. The maximum amount of penalty sought against each violator in a proceeding under this subsection may not exceed $200,000, unless the Secretary and the Attorney General jointly determine that a larger amount is appropriate. A determination by the Secretary and the Attorney General on the appropriateness of a larger amount is not subject to judicial review.

(2) The Secretary shall assess an administrative penalty under this subsection by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5 of the United States Code. Before issuing such an order, the Secretary shall give to the person to be assessed an administrative penalty written notice of the Secretary's proposal to issue an order. That person has 30 days from the date the notice is received to request a hearing on the order. The Secretary shall issue rules for procedures for hearings under this subsection. The Secretary may compromise, modify, or remit, with or without conditions, an administrative penalty that the Secretary imposes under this subsection.

(3) An order issued under this subsection becomes final 30 days after its issuance unless a petition for judicial review is filed under paragraph (4).

(4) Within 30 days following the date an administrative penalty is issued under this subsection, a person against whom the administrative penalty is assessed may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, the person resides, or the person's principal place of business is located. That person shall send a copy of the filing seeking review by certified mail to the Secretary and the Attorney General on the day of the filing. Within 30 days of the date the Secretary receives a copy of the filing, the Secretary shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court shall not set aside or remand the order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Secretary's assessment of the penalty constitutes an abuse of discretion. In a proceeding under this subsection, the United States may seek to recover administrative penalties assessed under this subsection.

(5) If a person fails to pay an assessment of an administrative penalty imposed by the Secretary under this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Secretary,

the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed, plus interest at rates established under section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or the date of the final judgment, as the case may be. In this action, the validity, amount, and appropriateness of the penalty is not subject to review. A person who fails to pay on a timely basis the amount of an assessment of an administrative penalty under this section shall be required to pay, in addition to the amount and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. This nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of the quarter.

(d) In determining the amount of a penalty to be assessed under this section, the Secretary or the court, as appropriate, shall take into consideration, in addition to other factors justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

IMPLEMENTATION

SEC. 717. The Secretary of Energy shall issue regulations to implement this subtitle.

TITLE VIII—INNOVATION AND TECHNOLOGY TRANSFER

STEVENSON-WYDLER ACT AMENDMENTS

SEC. 801. (a) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended by adding the following new subsection after subsection (g):

"(h) COPYRIGHT OF COMPUTER SOFTWARE.—Each Federal agency may secure copyright on behalf of the United States as author or proprietor in any computer software prepared in whole or in part by employees of the United States Government in the course of work under a cooperative research and development agreement entered into under the authority of subsection (a)(1) of this section, or under any other equivalent authority, notwithstanding the limitations contained in section 105 of title 17, United States Code; and may grant or agree to grant in advance to a collaborating party, licenses or assignments for such copyrights, or options thereto, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to reproduce, adapt, translate, distribute, and publicly perform or display the computer software throughout the world by or on behalf of the Government and such other rights as the Federal agency deems appropriate.".

(b) Section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703) is amended by adding at the end the following new paragraph:

"(14) Computer software means a computer program, as defined in section 101 of title 17, United States Code, and any associated documentation, supporting materials, or user instructions.".

ROYALTY PAYMENTS TO AUTHORS

SEC. 802. (a) Sections 14(a)(1)(A), (14)(a)(2), and 14(a)(3) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c (a)(1)(A), (a)(2) and (a)(3) are amended—

(1) by inserting "or computer software" after "inventions;" each place it appears;

(2) by inserting "or computer software" after "invention" each place it appears;

(3) by inserting "or author" after "inventor" each place it appears;

(4) inserting "or co-author" after "co-inventor" each place it appears;

(5) by inserting "or authors" after "inventors" each place it appears;

(6) by inserting "or co-authors" after "co-inventors" each place it appears; and

(7) by inserting "or author's" after "inventor's" each place it appears.

(b) Section 14(a)(1)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B)) is amended—

(1) by inserting "or computer software" after "income from any invention";

(2) by inserting "or computer software was developed" after "the invention occurred";

(3) by inserting "or computer software" after "licensing of inventions" in clause (i);

(4) by inserting "or computer software which was developed" after "with respect to inventions" in clause (i); and

(5) by inserting "or computer software" after "organizations for invention" in clause (i).

(c) Section 14(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)), is amended by inserting "or author" after "including inventor".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 803. Section 12(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(c)), is amended by inserting "or computer software" after "inventions" each place it appears.

THE SECRETARY OF ENERGY,
Washington, DC, March 4, 1991.

Hon. DAN QUAYLE,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: On February 20, I was privileged to be with the President when he presented to the American people the National Energy Strategy.

The National Energy Strategy is not merely a statement of policy. It is a strategy of shared responsibility among industry, government, science and the American people. Many of the elements of the National Energy Strategy can be accomplished without additional Federal legislation through administrative reform, private initiative or State and local action. Some of the National Energy Strategy initiatives, on the other hand, will require the enactment of legislation.

I am enclosing on behalf of the Administration, the non-tax legislative component of the National Energy Strategy. This comprehensive bill is cited as the "National Energy Strategy Act." Its enactment would be in accord with the President's legislative program. Under separate cover I also am forwarding complementary legislation implementing the tax portion of the energy strategy, the "National Energy Strategy Tax Act".

Title I of the bill deals with energy efficiency in the residential, commercial, and Federal sectors of the economy. It would authorize the development of energy efficiency test procedures and labeling for electric lights and a number of commercial products so that consumers can make informed choices. It also would permit Federal agencies to take advantage of utility discounts and rebates, just as other electricity consumers do.

Increasing use of our ample supplies of natural gas is an important component of lessening the country's dependence on oil. Several proposals are included in title II to make it easier for natural gas to get from the producer to the consumer, primarily streamlining regulatory processes to expedite construction of new natural gas pipelines and by encouraging commercial agreements without the imposition of regulatory decision or approval.

Also in title II is a proposal to establish a Natural Gas and Electricity Administration within the Department of Energy to replace the Federal Energy Regulatory Commission. This proposal was developed independently of the National Energy Strategy by the Vice President's Council on Competitiveness. It is included here because it complements the reform and streamlining of the regulatory infrastructure for the natural gas and hydroelectric power industries contained in the National Energy Strategy.

To help secure future energy supplies, title III of the bill would authorize Arctic Coastal Plain leasing under strictly controlled conditions. The bill provides that all of the revenues from leasing would be deposited in the miscellaneous receipts account of the Treasury, consistent with the President's National Energy Strategy and FY 1992 budget. The Administration recognizes that other legislation in Congress would authorize 50-50 receipt sharing with the State of Alaska. Alaska officials are proposing even more favorable terms for the State. We plan to work with Congress to resolve this issue in a manner that is fair to the Citizens of Alaska.

Other proposals to stimulate efficient oil production and transportation include the leasing of the Naval Petroleum Reserves and oil pipeline deregulation. The leasing proposal has been modified from one submitted to the 101st Congress so that the State of California would now share in the revenues. The oil pipeline deregulation proposal is similar to the one submitted to the last Congress.

Electricity generation and use is the subject of title IV, which includes reform of the Public Utility Holding Company Act to eliminate barriers to investment and Power Marketing Administration repayment reform. Regulatory structures that were appropriate in the 1930's are no longer appropriate. Removing them will stimulate competition in the electric power industry.

In order to meet expected growth in electricity demand, we must revitalize the nuclear power option in this country. Two current impediments are the licensing process and lack of progress in nuclear waste disposal management. Title V of the bill provides solutions to these problems.

Increasing renewable energy production and consumption is another vital element of a balanced approach to energy. Permanently removing size caps that limit benefits to renewable generation units under the Public Utility Regulatory Policies Act is proposed in title VI. Also, improvements in the hydropower licensing and relicensing process are included in the bill, aimed primarily at maintaining and enhancing hydroelectric power production at existing facilities.

For the transportation sector, the Administration is proposing in title VII a very strong stimulus to the use of alternative fuels by requiring automobiles and truck fleets to procure specified percentages of alternatively-fueled vehicles beginning in 1995. We also have included repeal of a cap on Corporate Average Fuel Economy (CAFE) credits for the manufacture of dual and flexible fuel vehicles.

Finally, in title VIII, the Administration is proposing legislation to strengthen America's competitive posture. Title VII contains important copyright protection for computer software developments in Government-owned, contractor-operated facilities. This proposal, when coupled with the research and energy investment tax credit proposals being forwarded separately, and with product liability legislation, will help stimulate industrial innovation.

This package, together with the many elements of the National Energy Strategy not requiring legislation, provides an extremely ambitious, balanced blueprint for our energy future. Achieving a national consensus in support of the Strategy and implementing legislation will be critical to achieving our energy, environmental and economic goals. We in the Administration very much look forward to working with you and your colleagues in the Congress on early enactment of responsible, balanced energy legislation.

We owe the American people, whom we all serve, no less.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).

NATIONAL ENERGY STRATEGY ACT SECTIONAL ANALYSIS

TITLE I—RESIDENTIAL, COMMERCIAL, AND FEDERAL ENERGY USE

Subtitle A—Consumer and Commercial products

Section 101. Definitions.

Section 101 would:

(1) Place electric lights within the definition of a "consumer product";

(2) Define "commercial product"; and

(3) Expand the definition of a "covered product" to include commercial and consumer products.

Section 102. Coverage.

Section 102 would:

(1) Add electric lights to the list of consumer products; and

(2) Create a list of commercial products.

Section 103. Test Procedures.

Section 103 would allow the Secretary of Energy to prescribe test procedures for electric lights and commercial products.

Section 104. Labeling.

Section 104 would require the Federal Trade Commission (FTC) to prescribe labeling rules for electric lights and commerical products. The requirement would not apply if labeling were not technologically or economically feasible or if an alternative, such as voluntary labeling, would provide a superior approach.

Section 105. Energy Conservation Standards.

Section 105 would prohibit the Secretary of Energy from prescribing energy conservation standards for electric lights and commercial products.

Section 106. Conforming Amendment.

Section 106 would amend the catchline for title III, part B of the Energy Policy and Conservation Act (EPCA).

Subtitle B—Federal Energy Management

Section 111. Utility Incentive Programs.

Section 111 would allow a Federal agency to participate in programs conducted by utilities for the management of energy demand or for the application of energy conservation measures in Federal buildings and to accept a financial incentive offered by a utility, including a cash incentive, to adopt energy conservation measures that are life cycle cost effective. The agency could retain and use the financial incentive without the need for further appropriations. This section would extend to all Federal agencies authority given to the Department of Defense and the General Service Administration in separate legislation.

TITLE II—NATURAL GAS

Subtitle A—Natural gas pipeline regulatory reform

Section 201. Gas Delivery Interconnection.

Section 201 would provide that the Federal Energy Regulatory Commission (FERC or the Commission) may direct a pipeline to interconnect physically with other facilities, at the applicant's expense, in order to receive natural gas from the other facilities for transportation in the pipeline. This section also would expand similar, existing authority to direct delivery or sale to local distribution companies (LDC's) to cover nonjurisdictional pipelines. Pipelines could not be compelled to expand their facilities or establish physical connection if that would impair the pipeline's ability to render adequate service to its customers.

Section 202. NEPA Compliance.

Section 202 would provide that the only environmental impact statement for a pipeline project required by the National Enviornmental Policy Act of 1969 (NEPA) is that prepared by FERC, which still would be required to consult with and solicit comments from other agencies.

This section also would permit the Commission to charge an applicant directly for the environmental documentation costs FERC incurs that are associated with processing applications for permission to construct and operate natural gas pipeline facilities under the Natural Gas Act (NGA) and hydroelectric facilities under the Federal Power Act (FPA). These charges would not be applied against FERC appropriations.

Section 203. Amendment to Section 311 of the Natural Gas Policy Act of 1978.

Section 203 would provide two revisions to section 311 of the Natural Gas Policy Act of 1978 (NGPA). First, the parties for whom section 311 transportation may be performed "on behalf of" would be expanded to include not only inter- and intra-state pipelines and LDC's, but also "any other person." By allowing "any person" to resort to section 311, this section would allow marketers and end-users to become parties on whose behalf section 311 transportation may be performed.

A second proposed change would be to make explicit what has been accepted as implied, that is, the authority to "construct" section 311 facilities. The Commission's rules have allowed for this, provided FERC was notified prior to the commencement of construction. Under the proposed change, State commissions, and not FERC, would receive prior notice. There would be no need for FERC to complete NEPA documentation for construction of individual projects under section 311. State and other environmental laws would not be affected. Eminent domain rights would not attach since the applicant would not be required to obtain a certificate. However, State economic regulation of these facilities would be preempted.

Section 204. Optional Certificate Procedures.

Section 204 would provide that entities willing to construct, and customers willing to enter transportation agreements at negotiated rates, would be free to do so with a minimum of government intrusion. This section would add a new section 7(i) to the NGA for an optional certificate, which could not be challenged by a potential competitor in a hearing on the basis that the certificate was exclusive or prejudicial to another application. The costs of the new facility constructed under this section could not be included at any later date in a rate filing under section 4 of the NGA for these or other facilities. The holder of such a certificate would not be allowed to contest the application of another entity seeking to serve the same area. Negotiated rates or charges would be considered just and reasonable and in compliance with the prohibition against granting any undue preference, or advantage or maintaining any unreasonable difference in rates, charges, or service under NGA sections 4(a) and 4(b). The requirements for filing new rate schedules with the Commission for a determination as to the justness and reasonableness of the rates under NGA sections 4(c), 4(d), and 4(e) would be removed. As between affiliated natural gas companies, it is intended that FERC retain its authority to review the prudence of such transactions on the part of the downstream affiliate.

If a person seeks service from an optional certificate or a nonjurisdictional pipeline after construction has been completed but cannot get service or agree upon the rate offered, the person would be permitted to petition the Commission for a rate which is not unduly discriminatory. This would not be a cost-based, just and reasonable standard. It would be only a requirement to provide a similar rate for similar service, if capacity is available. The petitioner could request service at a not unduly discriminatory rate, which could commence within sixty days unless the pipeline files a higher rate, in which event service could commence at that rate, subject to refund to a minimum of the petitioned rate. The burden of proof would be on the pipeline. Because the optional certificate would be a section 7 certificate, two features of section 7 still would attach: (a) State regulation would be preempted, and (b) the right of eminent domain would be available. Because this would be a "Federal action", that is, a certificate is issued, NEPA would apply, and FERC would retain authority to impose appropriate environmental terms and conditions on the certificate.

A pipeline previously certificated under 7(c) of the NGA may elect to convert to this transaction-oriented approach to doing business with its customers, rather than regulated rate approach, by obtaining abandonment authority from FERC under section 7(b) of the NGA.

Section 205. Non-jurisdictional Option.

Section 205 would provide that a person may elect to build new pipeline facilities without any FERC certification. Since no FERC action is required, any environmental reviews would be by State or other Federal agencies. No Federal right of eminent domain would attach, although state economic regulation would be preempted. When adequate capacity exists, FERC would have the right—(1) under proposed section 5(c), to order that service be provided at rates or charges that are not unduly discriminatory and (2) under proposed section 7(a), to order physical interconnection.

The Commission also would be given the specific authority to issue an order finding that rates charged by a natural gas company in a market are not within the Commission's jurisdiction under the NGA if, after a hearing, the Commission finds that the market is competitive and that the natural gas company offers service to that market on a basis which is not unduly discriminatory. This authority is in addition to the Commission's existing authority to determine that market-based rates meet the just and reasonable standard when sufficient competition exists to protect consumers from market power abuses.

Subtitle B—Natural gas import/export deregulation

Subtitle B would eliminate the obligation to obtain prior approval from the Federal Government for a natural gas import or export and, then, would ensure equal treatment for natural gas whether produced and consumed in the United States, imported for consumption in the United States, or exported for consumption outside the United States.

Section 211. Coverage of Natural Gas Act.

Section 211 would amend the "Hinshaw pipeline" provision in section 1 of the NGA. The amendment would exempt from regulation under the NGA intrastate pipelines that could become subject to that regulation because their transport of natural gas to be exported comes within the amended definition of "interstate commerce."

Section 212. Definitions.

Section 212 would amend two definitions in the NGA.

Paragraph (1) would amend the definition of "interstate commerce" in section 2 of the NGA to include natural gas imported into the United States and natural gas to be exported from the United States while that gas is within the United States.

This amendment would result in the regulation of imports and exports of natural gas in the same manner as domestic natural gas in interstate commerce under sections 4, 5, 7, and 16 of the NGA. As with domestic gas, the Commission's authority over imports and exports of natural gas is subject to the limitations in section 1 of the NGA concerning gathering, Hinshaw pipelines, and local distribution. The amendment would treat as natural gas in interstate commerce any gas to be exported from the United States, except for gathering activities, whether the gas is produced in the State from which it is exported or in another State. The amendment also would treat as natural gas in interstate commerce any imported gas whether the imported natural gas is consumed in the State of import or another State. As is the case with domestic natural gas, "interstate commerce" would not cover the local distribution of imported natural gas or an intrastate pipeline to the extent section 1(c) of the NGA applies. This amendment is intended to resolve any ambiguity that might arise because of the distinction between "foreign commerce" and "interstate commerce" discussed in various court cases. This amendment would not make any person not currently a "natural gas company" a "natural gas company" solely because of the "exportation" or "importation" of natural gas.

Paragraph (2) would amend section 2 of the NGA to include definitions of "importation" and exportation. In general, these definitions would limit the new, expanded definition of "interstate commerce" and exclude from regulation the broad policy aspects of the international gas trade that would be deregulated by this legislation.

These new definitions would be added to make clear what activities are covered by the changes to section 3 of the NGA so that neither the Commission nor a State would extend its regulatory authority over natural gas into the areas of "foreign commerce" that are deregulated by this legislation, that is, those activities that were the responsibility of the Secretary of Energy under the Department of Energy (DOE) Organization Act prior to enactment of this legislation. Thus, there would be no governmental second-guessing about the price and the other terms and conditions of an exportation or importation arrangement. This would not affect FERC's authority to determine how a domestic pipeline passed through costs, including costs of imported gas, to its domestic sales customers. In general, the definition of "importation" would result in natural gas importers being treated as producers of natural gas, that is, no regulation until the gas enters the domestic pipeline system. Likewise, the definition of "exportation" is intended to result in natural gas exporters being treated just like consumers of natural gas, that is, no regulation after the gas leaves the domestic pipeline system.

Section 213. Natural Gas Imports and Exports.

Section 213 would amend section 3 of the NGA by replacing the current language with four new paragraphs. The deletion of the current language would eliminate the need for persons to obtain an authorization from the Federal Government before importing or exporting natural gas, thus, in effect, fully deregulating the international gas trade.

New subsection (a) states that the importation of natural gas would be considered a first sale for purposes of the NGA and the NGPA. The purpose of this subsection is to treat imported natural gas as if it were domestic natural gas produced from a well at the border, that is, deregulated. The Commission would be barred from regulating actions "outside" the United States. However, to the extent an import arrangement is crafted to include events within the United States other than those included in the definition of importation, these events could be separated from the first sale and regulated. For example, if an import arrangement included transportation by an interstate pipeline, that interstate transportation could be regulated just like the interstate transportation of domestic gas. Neither the Commission nor a State, however, could look behind the price of the imported gas any more than it could look behind the price of the first sale of domestic natural gas.

New subsection (b) would make clear that the deletion of the current language of section 3 would preempt the Commission or any State from using any other source of authority to regulate the exportation and importation of natural gas. It would not prevent regulation of imported or exported natural gas within the United States as long as the regulation does not relate to actions involved in the importation and exportation and is consistent with the principle that imported or exported natural gas is to be treated in the same manner as natural gas which is produced, transported, and consumed entirely within the United States.

New subsection (c) would grant the President authority to prohibit or condition the exportation or importation of natural gas when the President determines the national interest requires this action. This subsection would recognize that, in unusual circumstances, natural gas imports and exports may involve international considerations which require oversight by the executive branch.

New subsection (d) would permit the President to waive, or establish an expedited timetable for compliance with, provisions of law relating to the exportation or importation of natural gas. This subsection would ensure that, if the President finds a significant exportation or importation project important to the national interest, the project would not be delayed unnecessarily, allowing United States companies to compete on even terms with foreign companies in the international gas trade.

Subtitle C—Structural reform of the Federal Energy Regulatory Commission

Section 221. Natural Gas and Electricity Administration.

Subsection (a) would amend section 2(a) of the DOE Organization Act (42 U.S.C. 7101(a)) to remove the reference to FERC from the definition of "Department".

Subsection (b) would amend section 204 of the DOE Organization Act (42 U.S.C. 7134) to rename FERC the Natural Gas and Electricity Administration (NGEA). The amendment would strike references to the Chairman and Commissioners and insert a description of the position of "Administrator" of NGEA, who would be appointed by the President, with the advice and consent of the Senate.

Subsections (c) and (d) would amend sections 301(b) and 306 of the DOE Organization Act (42 U.S.C. 7151(b) and 7155) to remove the exception referencing the powers vested in FERC and to transfer to the Secretary all functions of the Federal Power Commission, FERC, and functions of the Interstate Commerce Commission previously vested in FERC.

Subsection (e) would strike title IV of the DOE Organization Act in its entirety and insert in its place a new title, "Title IV—Natural Gas and Electricity Administration". This subsection would establish NGEA within DOE. This subsection also (1) would provide that the Secretary be responsible for the appointment of hearings examiners and (2) would retain and transfer to the Secretary the specific authority to establish rates or charges by rulemaking procedures under the EPA or the NGA.

Subsection (f) would amend section 501(a)(1) of the DOE Organization Act (42 U.S.C. 7191(a)(1)) by eliminating the exemption for FERC rules and regulations issued under the authority of the DOE Organization Act from the provisions of subchapter II of chapter 5 of title 5, United States Code (5 U.S.C. 551). Subsection (f) would also amend section 501(a)(2) of the DOE Organization Act (42 U.S.C. 7191(a)(2)), to eliminate the requirement that the administrative provisions of the DOE Organization Act apply to FERC's exercise of its power to review regulations issued by the Secretary under the Emergency Petroleum Allocation Act of 1973 and the exercise of any other functions assigned to it by the Secretary.

Subsection (g) would amend section 502(a) of the DOE Organization Act (42 U.S.C. 7192) to eliminate the reference to FERC. Section 502(a) specifies that the judicial review of actions taken by the listed entities under any law transferred under the DOE Organization Act shall be in accordance with the provisions of the law transferred. Subsection (g) also would amend section 502(c) to eliminate the reference to the provisions of title IV excepting FERC from the requirement that the Attorney General of the United States supervise the litigation of DOE.

Subsection (h) would amend section 503 of the DOE Organization Act (42 U.S.C. 7193) to transfer from FERC to the Secretary the authority to stay and review contested remedial orders issued by the Secretary under the Emergency Petroleum Allocation Act of 1973.

Subsection (i) would amend section 504 of the DOE Organization Act (42 U.S.C. 7194) to transfer from FERC to the Secretary the authority to review denials of requests for adjustments under the Federal Energy Administration Act, the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or EPCA.

Subsection (j) would amend section 605(a)(3) of the DOE Organization Act (42 U.S.C. 7215(a)(3)) to remove the reference to FERC from the requirements for exceptions to postemployment prohibitions.

Subsection (k) would amend section 649(a) of the DOE Organization Act (42 U.S.C. 7259(a)) to eliminate the separate authority of FERC to use the facilities of any agency of the United States or of any State or foreign government in carrying out its functions.

Subsection (l)(1) would amend section 705 of the DOE Organization Act (42 U.S.C. 7295) to eliminate FERC from the list of those having authority to revoke existing orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges. Subsection (l)(1) would also eliminate FERC from the list of those authorized to promulgate regulations providing for the orderly transfer of proceedings to the DOE. Subsection (l)(2) would make the savings provisions of section 705 applicable to proceedings before FERC at the time of enactment of this subtitle.

Subsection (m) would amend section 707 of the DOE Organization Act (42 U.S.C. 7297) to eliminate the reference to FERC. Section 707 specifies that any reference in any law to any department or commission whose functions are transferred by this subtitle shall be deemed to refer to the Secretary or FERC.

Subsection (n) would amend section 708 of the DOE Organization Act (42 U.S.C. 7298) to eliminate the exception created by the reference to the provisions of title IV which may limit the authority of the President.

Subsection (o) would amend section 5314 of title 5, United States Code to substitute the Administrator of NGEA for the Chairman of FERC in the list of positions to be compensated under level III of the Executive Schedule. Subsection (n) also would amend section 5315 of title 5, United States Code to eliminate the members of FERC from the list of positions to be compensated under level IV of the Executive Schedule.

Subsection (p) would amend section 901 of the DOE Organization Act (42 U.S.C. 7341) to remove FERC's authority to promulgate regulations relating to the transfer of functions and proceedings under the DOE Organization Act, and FERC's authority to use funds available to any department or agency whose functions are transferred to FERC under the DOE Organization Act.

Subsection (q) would amend the Table of Contents of the DOE Organization Act to conform with the changes made by this subtitle.

TITLE III—OIL

Subtitle A—Alaska coastal plain oil and gas leasing

Part 1—Short Title and Statement of Purpose

Section 301. Short Title.

This section cites the short title of this subtitle as the "Arctic Coastal Plain Oil and Gas Leasing Act".

Section 302. Statement of Purpose.

This section sets forth the purpose and policy of this subtitle.

Part 2—Definitions

Section 303. Definitions.

This section sets forth definitions, including defining "Secretary" to mean the Secretary of the Interior.

Part 3—Coastal Plain Competitive Leasing Program

Section 304. Leasing Program for Lands Within the Coastal Plain.

Section 304(a) would require the Secretary of the Interior and other appropriate Federal officers and agencies to take such actions as are necessary to establish and implement a competitive oil and gas leasing program that will result in an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain.

Section 304(b) would provide that this subtitle shall be the sole authority for leasing on the Coastal Plain.

Section 304(c) provides that the Coastal plain shall be considered "Federal Land" for the purposes of the Federal Oil and Gas Royalty Management Act of 1972 (30 U.S.C. 1701).

Section 305. Rules and Regulations.

Section 305(a) would provide that the Secretary of the Interior shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of the subtitle, including rules and regulations relating to protection of the environment of the Coastal Plain, as required by part 4 of the subtitle. Such rules and regulations shall be promulgated within nine months after the date of enactment of the subtitle.

Section 305(b) would provide that in the formulation and promulgation of rules and regulations under the subtitle, the Secretary of the Interior shall consult with appropriate officials of the State of Alaska and the government of Canada and with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

Section 305(c) would provide that the Secretary of the Interior shall periodically review, and if appropriate, revise the rules and regulations.

Section 306. Adequacy of Department of the Interior's Legislative Environmental Impact Statement.

Section 306(a) would provide that the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3101) (ANILCA) and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) is found by Congress to be compatible and consistent with the legal requirements under NEPA with respect to actions authorized to be taken by the Secretary of the Interior to develop and promulgate the regulations for the establishment of a leasing program prior to conducting the first lease sale.

Section 306(b) would provide that except as provided in section 306(a), nothing in the subtitle shall be considered or construed as otherwise limiting or affecting in any way the applicability of section 102(2)(C) of NEPA to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by the subtitle, nor shall anything in the subtitle be considered or construed as in any way limiting or affecting the applicability of any other Federal or State law relating to the protection of the environment.

Section 307. Lease Sales.

Section 307(a) would provide that lands may be leased pursuant to provisions of the subtitle to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

Section 307(b) would provide that the Secretary of the Interior shall, by regulation, establish procedures for certain specified activities.

Section 307(c) would provide that the Secretary of the Interior shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process. For the first sale, the Secretary of the Interior shall, consistent with the requirements set forth in part 4 of the subtitle, offer for lease those acres receiving the greatest number of nominations, but not to exceed a total of 300,000 acres. If the total acreage nominated is less than 300,000 acres, he shall include in such lease sale any other acreage which he believes has the highest resource potential, but in no event shall more than 300,000 acres of the Coastal Plain be offered in such sale. Thereafter, no more than 300,000 acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held twenty-four months after the initial sale, with additional sales conducted every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the judgment of the Secretary, the conduct of such sales.

Section 307(d) would provide that areas of the Coastal Plain deemed by the Secretary of the Interior to be of particular environmental sensitivity may be excluded from leasing by the Secretary and that notice of such a determination shall be provided to the specified appropriate Committees of the Congress. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary of the Interior shall, consistent with provisions of section 307(c), offer such lands for leasing.

Section 308. Grant of Leases by the Secretary of the Interior.

Section 308(a) would provide that the Secretary of the Interior is authorized to grant to the highest responsible bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary. The Secretary is to ensure the receipt of fair market value. The royalty shall be fixed in the lease and shall not be less than twelve and one-half per cent in amount or value of the production removed or sold from the lease.

Section 308(b) would provide that the Secretary of the Interior shall not accept a bid for a lease if the Secretary finds, after notice, that the bidder has failed or refused to comply in any material respect with the reclamation requirements or other standards established for any prior lease. Prior to making such a determination, the Secretary shall provide the bidder an opportunity to comply with such reclamation requirements or other standards. Once the bidder has complied with the reclamation requirement or other standard, the Secretary may issue a lease under provisions of this subtitle.

Section 308(c) would provide that following each notice of a proposed lease sale and before the acceptance of bids, the Secretary of the Interior shall allow the Attorney General, in consultation with the FTC, thirty days to conduct an antitrust review of each lease sale. The Attorney General, after consultation with the FTC, may make such recommendations to the Secretary of the Interior, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation which may substantially lessen competition. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the FTC and prior to the issuance of any lease, that such a lease would create or maintain a situation which may substantially lessen competition, the Secretary may refuse to accept an otherwise qualified bid for such lease or modify or impose terms or conditions on the lease. The Secretary may issue a lease notwithstanding adverse from the Attorney General, or refuse to impose recommended terms or conditions, if he makes certain specific findings. The remaining provisions are self-explanatory.

Section 308(d) would provide that nothing in the subtitle shall be deemed to convey to any person, association. corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions under any antitrust law. The findings of any antitrust review shall not create any immunity or defenses in any private or government antitrust actions.

Section 308(e) sets forth a definition.

Section 309. Lease Terms and Conditions.

Section 309 sets forth lease terms and conditions. The provisions are self-explanatory.

Section 310. Exploration and Development and Production Plans.

Section 310(a) would provide that all exploration activities pursuant to any lease issued or maintained under the subtitle shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. The remaining provisions of the section are self-explanatory.

Section 310(b) would provide that all development and production activities pursuant to any lease issued or maintained under the subtitle shall be conducted in accordance with an approved development and production plan. The remaining provisions of the section are self-explanatory.

Section 310(c) sets forth information to be included in exploration plans and employment and production plans where applicable.

Section 310(d) sets forth procedures for plan approval. The provisions are self-explanatory.

Section 310(e) would provide that if at any time while activities are being conducted under a plan approved under this section the Secretary of the Interior, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, their habitat, or the enviroment, the Secretary, after consultation with the lessee shall: (1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect; (2) temporarily suspended part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid such significant adverse effect; or (3) terminate and cancel the plan where actions under paragraph (1) or (2) will not avoid the significant effect.

Section 311. Bonding Requirements.

Section 311(a) sets forth the requirement for a performance bond. The provisions of the section are self-explanatory.

Section 311(b) sets forth the requirements relating to the amount of the performance bond. The provisions of the section are self-explanatory.

Section 311(c) would provide that in the event that an approved exploration or development and production plan is revised, the Secretary of the Interior may adjust the amount of the bond to conform to such modified plan.

Section 311(d) would provide that the responsibility and liability of the lessee and its surety under the bond or security deposit shall continue until such time as the Secretary of the Interior determines that there has been compliance with the terms and conditions of the lease and all applicable law.

Section 311(e) would provide that within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary of the Interior, after consultation with affected Federal and State agencies, shall notify the lessee that the period of liability under the bond or security deposit has been terminated.

Section 312. Lease Suspension.

Section 312 would provide that the Secretary of the Interior may direct or assent to the suspension of operations and production under any lease granted under the terms of this subtitle: (1) in the interest of conservation of the resource; (2) where there is no available system to transport the resource; or (3) where there is a threat of significant adverse effect upon fish or wildlife, their habitat, or the environment. If a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding such suspension period thereto.

Section 313. Lease Cancellation.

Section 313(a) sets forth the requirements relating to cancellation of nonproducing leases. The provisions of the section are self-explanatory.

Section 313(b) sets forth the requirements relating to cancellation of producing leases. The provisions of the section are self-explanatory.

Section 313(c)(1) would provide that in addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be cancelled at any time, if the Secretary of the Interior determines, after a hearing, that: (1) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense; (2) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or decrease to any acceptable extent within a reasonable period of time; and (3) the advantages of cancellation outweigh the advantages of continuing the lease.

Section 313(c)(2) would provide that cancellation under section 313(c) shall not occur unless and until operations under such lease permit shall have been under suspension, or temporary prohibition, by the Secretary of the Interior, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

Section 313(c)(3) would provide that cancellation under section 313(c) shall entitle the lessee to receive certain specified compensation.

Section 313(d) would clarify that cancellation of a lease in no way releases the owner of the lease from the obligation to provide for reclamation of the lease site.

Section 314. Assignment or Subletting of Leases.

Section 314 would provide that no lease issued under the authority of the subtitle shall be assigned or sublet, except with the consent of the Secretary of the Interior.

Section 315. Relinquishment.

Section 315 would provide that the lessee may, at the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this subtitle. The Secretary shall accept the relinquishment by the lessee of any lease issued under this subtitle where there has not been surface disturbance on the lands covered by the lease.

Section 316. Unitization.

Section 316 would provide that the Secretary of the Interior shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of an oil or gas pool, field, or like area, or any part thereof. The Secretary is authorized and directed to enter into such agreements as are necessary or appropriate for the protection of the United States against drainage.

Section 317. Oil and Gas Geological and Geophysical Information.

Section 317 sets forth requirements relating to oil and gas geological and geophysical information. The provisions of this section are self-explanatory.

Section 318. Remedies and Penalties.

Section 318(a) would provide that except as provided in section 319 of the subtitle, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under the subtitle. Proceedings may be instituted in the judicial district in which the defendant resides or has his principal place of business, or in the judicial district in which the Coastal Plain is located.

Section 318(b) would provide that at the request of the Secretary of the Interior, the Attorney General may institute civil action in the District Court of the United States for the district in which any defendant resides or has his principal place of business, or in the judicial district in which the Coastal plain is located for a temporary or permanent injunction, judicial assessment and recovery of civil penalties, or other appropriate remedy to enforce any provision of the subtitle, any regulation or order issued under this subtitle, or any term of a lease issued pursuant to the subtitle.

Section 318(c)(1) would authorize civil penalties of not more than $20,000 for each day of continuance of a failure to comply with the subtitle, a lease term, or a regulation or order issued under the subtitle, after notice of such failure and expiration of any reasonable period allowed for corrective action. The Secretary of the Interior is authorized to adjust the penalty specified at least every three years to reflect any increases in the Consumer Price Index.

Section 318(c)(2) would authorize the Secretary of the Interior to assess a civil penalty without regard to the requirement of expiration of a period allowed for corrective action if the failure described in subsection 318(c)(1) constitutes or constituted a threat of irreparable or immediate significant adverse effect on fish or wildlife, their habitat, property, any mineral deposit, or the marine, Coastal Plain or human environment.

Section 318(d) would provide for criminal penalties of not more than $100,000 or imprisonment for not more than ten years, or both. The remaining provisions of the subsection are self-explanatory.

Section 318(e) sets forth provisions relating to the liability of corporate officers and agents for violations by a corporation or other entity. The remaining provisions of the subsection are self-explanatory.

Section 318(f) would provide that the remedies in this subtitle shall be concurrent and cumulative.

Section 318(g) would provide that if any area of the Coastal Plain or adjacent state waters has been or is being polluted by discharges of oil or hazardous or toxic substances, or any other pollutant that adversely affects the environment from exploration, development, or production of oil or gas or related activities, conducted by, or on behalf of, the responsible party, the responsible party shall be jointly, severally and strictly liable for the removal costs and damages specified in this subsection that arise directly from or directly result from such pollution. The Secretary of the Interior shall determine the extent of liability after notice to the responsible party and opportunity for a hearing. The section clarifies that it is the responsibility of the responsible party adequately to control and remove the pollution consistent with the National Contingency Plan. If the responsible party fails to adequately control and remove the pollutant, the Federal on-scene coordinator in cooperation with the Secretary, in the exercise of his discretion and other federal, State and local agencies or in cooperation with the responsible party shall have the right to accomplish the control and removal

at the expense of the responsible party. Funds contained in the Coastal Plain Liability and Reclamation fund may be used to accomplish control and removal until such time as sufficient funds are recovered from the responsible party. The remaining provisions of the subsection are self-explanatory. This section is intended to supplement and not supplant the Oil Pollution Act of 1990, the Comprehensive Environmental Response Compensation and Liability Act of 1990 and any other applicable Federal and State environment law.

Section 318(h) would require that action for damages under this subtitle be brought within three years after the loss is discoverable or, for natural resource damages, the date of completion of damage assessment. An action for recovery of removal costs must be brought within three years after completion of the removal action.

Section 319. Judicial Review.

Section 319 addresses judicial review. The provisions of the section are self-explanatory.

Section 320. Annual Report to Congress.

Section 320 would provide that the Secretary of the Interior must file an annual report to Congress on the leasing program authorized in this subtitle.

Section 321. Interests of Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation.

Section 321(a) would provide that the prohibitions and limitations contained in section 1003 of ANILCA, insofar as they have application to lands or interests in lands owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge (ANWR), but outside the Coastal Plain, are repealed. The term "Inupiat Eskimo People" means the Kaktovik Inupiat Corporation (KIC) and the Arctic Slope Regional Corporation (ASRC), both corporations established by Inupiat Eskimo people of Alaska's North Slope pursuant to the Native Claims Settlement Act (ANCSA).

Section 321(b) would provide that the prohibitions and limitations contained in section 1003 of ANILCA, insofar as they have application to lands or interests in lands owned by the Inupiat Eskimo people within the Arctic National Wildlife Refuge, but outside the Coastal Plain, are repealed as of the day after the first lease sale is held pursuant to the subtitle. With respect to lands and interests in lands described in the subjection, no exploratory drilling activity shall be authorized until the day after such lease sale.

Section 321(c) would provide that the substantive provisions of the final regulations issued pursuant to this subtitle (which establish environmental stipulations, terms and conditions for oil and gas leasing on the Coastal Plain) are applicable to the exploration and development of all Surface property interests owned by the Inupiat people within the Arctic National Wildlife Refuge. Prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in section 321(a), shall be governed by the stipulations set forth in Appendix 2 of the August 9, 1983 agreement between the Arctic Slope Regional Corporation and the United States.

Section 321(d) sets forth procedures for the bringing of claims for monetary damages by the Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging the provisions of the subtitle constitute a taking of contract or property rights under the Fifth Amendment of the Constitution.

Part 4—Coastal Plain Environmental Protection

Section 322. No Significant Adverse Effect Standard to Govern Authorized Coastal Plain Activities.

Section 322(a) would provide that the Secretary of the Interior shall administer the provisions of this subtitle through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions designed to ensure that the oil and gas exploration, development, and production activities on the Coastal Plain will result in no significant adverse effect on fish or wildlife, their habitat, and the environment. Activities conducted under this subtitle would not be subject to findings or determinations of compatibility by the Secretary of the Interior under the National Wildlife Refuge System Administration Act.

Section 322(b) would provide that the Secretary of the Interior shall also require with respect to any proposed drilling and related activities, that (1) a site-specific assessment be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment; (2) a plan be implemented to mitigate any adverse effect assessed under paragraph (1) of the subsection; and (3) the development of a mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

Section 323. Regulations to Protect the Coastal Plain's Fish and Wildlife Resources, Subsistence Users and the Environment.

Section 323(a) would provide that prior to implementing the leasing program authorized by part 3 of the subtitle, the Secretary of the Interior shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken on the Coastal Plain authorized by the subtitle are conducted in a manner consistent with the purposes and environmental requirements of the subtitle.

Section 323(b) would provide that the proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by part 3 of this subtitle would require compliance with all applicable provisions of Federal and State environmental law and would also require:

(1) as the Secretary of the Interior deems appropriate, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid fish and wildlife breeding, denning, nesting, spawning, and migration;

(3) that exploration activities, except for surface geological studies, be limited to an approximate period between the first of November and the first of May and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, and air transport methods, provided, that such exploration activities may be permitted at other times if the Secretary of the Interior determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and he finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) design safety and construction performance standards for all pipelines and any access and service roads;

(5) prohibitions on public access and use of all pipeline access and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this subtitle, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: Provided, That the Secretary of the Interior may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river systems; protection of natural surface drainage patterns, wetlands, and riparian habitats; and regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solids wastes, reserve pit fluids, drilling mud and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) minimization of significant adverse effects upon subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary of the Interior.

Section 323(c) would provide that in preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary of the Interior shall consider: (1) the environmental protection standards which governed the initial Coastal Plain exploration program (50 Code of Federal Regulations 37.31–33); (2) the land use stipulations for exploratory drilling on the KIC–ASRC private lands which are set forth in Appendix 2 of the August 9, 1983 agreement between Arctic Slope Regional Corporation and the United States; and (3) the operational stipulations for Koniag ANWR interest lands contained in the draft Agreement between Koniag Inc. and the United States of America filed with the Secretary of the Interior on January 19, 1989.

Section 324. Sadlerochit Spring Special Area.

Section 324(a) would designate the Sadlerochit Spring area to be a Special Area

in which there will not be subsequent occupancy of the land. The remaining provisions of this subsection are self-explanatory.

Section 324(b) would authorize the Secretary of the Interior to designate other areas of the Coastal Plain as Special Areas if the Secretary determines they are of unique character and interest so as to require such special protection. The remaining provisions of this subsection are self-explanatory.

Section 325. Facility Consolidation Planning.

Section 325(a) would require the Secretary of the Interior, after providing for public notice and comment, to prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. The section sets forth objectives for the plan.

Section 325(b) would provide that the plan shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of ANILCA.

Section 326. Rights-of-Way Across the Coastal Plain.

Section 326 would provide that notwithstanding title XI of ANILCA, the Secretary of the Interior is authorized to grant under section 28 of the Mineral Leasing Act rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or so modified so as to avoid unnecessary duplication of roads and pipelines. The comprehensive oil and gas leasing and development regulations issued pursuant to the subtitle shall include provisions regarding the granting of rights-of-way across the Coastal Plain.

Section 327. Environmental Studies.

Section 327 would provide that in addition to any other environmental studies required by law, subsequent to exploring or developing of any area or region of the Coastal Plain, the Secretary of the Interior shall conduct such additional studies to establish environmental information as he deems necessary. The remaining provisions of the section are self-explanatory.

Section 328. Enforcement of Safety and Environmental Regulations.

Section 328(a) would provide that the Secretary of the Interior shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this subsection.

Section 328(b) sets forth responsibilities of holders of a lease. The provisions of this subsection are self-explanatory.

Section 328(c) would provide that the Secretary of the Interior shall promulgate regulations to provide for onsite inspection of facilities. The provisions of the subsection are self-explanatory.

Part 5—Land Reclamation and Reclamation Liability Fund

Section 329. Land Reclamation.

Section 329 would provide that the holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the lease holder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary of the Interior.

Section 330. Standard to Govern Land Reclamation.

Section 330 would provide that the standard to govern the reclamation of lands required to be reclaimed under the subtitle, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production, or upon application by the lessee, to a higher or better use as approved by the Secretary of the Interior; except that in the case of roads, drill pads and other gravel foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

Section 331. Coastal Plain Liability and Reclamation Fund.

Section 331(a) would direct that within six months of a commercial discovery within the Coastal Plain, the Coastal Plain Liability and Reclamation Fund (referred to as the "Reclamation Fund") be established by the Secretary of the Interior.

Section 331(b) would provide that the Secretary of the Interior shall collect from the owner of any commercially produced crude oil or natural gas liquids from the Coastal Plain at the time and point where such crude oil first enters the Trans-Alaska Pipeline, a fee of five cents per barrel. The collection of the fee shall cease when $50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below $45,000,000.

Section 331(c) would provide that all revenues collected under subsection (b) shall be paid into the Reclamation Fund. The remaining provisions of the subsection are self-explanatory.

Section 331(d) would provide that the revenue in the Reclamation Fund shall be available, to the extent provided in annual appropriation acts, with the approval of the Secretary of the Interior, for certain designated purposes. For purposes of section 331(d)(3), North Slope lands are lands in Alaska north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve-Alaska.

Section 331(e) would provide that the United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover certain funds expended due to failure of the responsible party to reclaim such area as required by the subtitle: Provided, That such right of recovery shall not be available against Alaska natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

Section 331(f) would provide that any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production and reclamation has been concluded in the Coastal Plain shall be paid into the miscellaneous receipts of the Treasury of the United States.

Part 6—Disposition of Oil and Gas Revenues

Section 332. Distribution of Revenues.

Section 332 would provide that notwithstanding any other provisions of law, all revenues received from competitive bids, sales, bonuses, royalties, rents, fees, interest charges, or other income derived from the leasing of oil and gas resources within the Arctic National Wildlife refuge shall be deposited in the miscellaneous receipts of the Treasury of the United States, consistent with the President's National Energy Strategy and FY 1992 budget. The Administration recognizes that other legislation in Congress would authorize 50–50 receipt sharing with the State of Alaska. Alaska officials are proposing even more favorable terms for the State. We plan to work with Congress to resolve this issue in a manner that is fair to the citizens of Alaska.

Section 333. Judicial Review.

Section 333(a) would provide that any legal action, including an action for declaratory judgment to challenge the determination made in section 332 of this subtitle shall be expedited in every way by the court. Any such action shall be brought within ninety days of enactment of this subtitle in an appropriate United States District Court, or such action will be barred. Any review of an interlocutory or final judgment, decree, or order of the United States District Court in such action may be had only upon direct appeal to the Supreme Court of the United States.

Section 333(b) would provide that nothing in this section shall be construed to grant causes of action to any person or to waive any defenses which may be available to the United States.

Section 333(c) would provide that if any action is brought in accordance with subsection 333(a), no lease sale shall occur under section 307 of the subtitle until a final nonappealable decision has been issued in any such action.

Subtitle B—Naval petroleum reserve leasing

Section 341. Short Title.

This section would cite this subtitle of the bill as the "Naval Petroleum Reserve Leasing Act".

Section 342. Leasing Authorization.

Section 342(a) would grant the Secretary of Energy the authority to lease Naval Petroleum Reserve Numbered 1 (NPR–1) if the President finds that NPR–1 is no longer necessary for national defense purposes or for assuring continuous exploration, development and operation of the reserve.

Section 342(b) would require the President to submit this finding to Congress, together with a report setting forth the basis of the finding, at least sixty days before the date of a lease.

Section 342(c)(1) would authorize the Secretary of Energy to use the lease proceeds to meet directly related contractual obligations, such as obligations under DOE's existing Unit Plan Contract at NPR–1 or obligations to an investment banker assisting with the leasing action, and to pay any DOE liabilities under any condemnation proceedings and Federal environmental laws, including the Clean Air Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response Compensation and Liability Act.

Section 342(c)(2) would require the Secretary of Energy, before entering into a lease, to ascertain that the rental price represents fair market value.

Section 342(d)(1) would require the Secretary of Energy to notify the Attorney General of each proposed lease contract, includ-

ing information needed to permit antitrust review of the transaction. The Attorney General shall advise within thirty days whether the lease would substantially lessen competition.

Section 342(d)(2) would specify that the subtitle does not confer upon any person civil or criminal liability immunities or antitrust law defenses.

Section 342(d)(3) would define "antitrust laws".

Section 342(e) would direct the Secretary of Energy to conduct a leasing action using competitive procedures. The Secretary may reject any and all offers or bids even if the offers or bids meet or exceed minimal acceptable levels.

Section 342(f) would require that a royalty payment of not less than twelve and one-half percent of the value of the resources removed from the lease be paid to the "Naval Petroleum Reserve Lease Proceeds Special Account", (Special Account) established under section 346 of this subtitle.

Section 342(g) would require lessees to retain records for six years (or longer, as the Secretary of Energy may direct). The lessee may also be required to make records available for audit; and in the event of late payments, the Secretary will assess interest and penalties and may cancel the lease term.

Section 342(h) would require lessees to set aside a portion (not greater than twenty-five percent of the estimated annual production of the reserve) of the crude oil produced for sale to small refiners at not less than prevailing local market price. The refiners may not resell the product and must sell it at fair market value.

Section 343. Procedures to Arrange and Conduct a Leasing Action.

Section 343(a) would require the Secretary of Energy to begin making arrangements for the lease of NPR-1 prior to the finding in section 342(a).

Section 343(b) would authorize the Secretary of Energy, in order to arrange and conduct a lease, to:

(1) create new business entities to which the United States' interest may be transferred;

(2) enter into contracts with State or private entities for professional services; and

(3) use DOE funds in the Department of Interior and Related Agencies Appropriations Acts, up to a five percent limit from the Naval Petroleum Reserves (NPR) account.

The Secretary of Energy would be required to use other Federal agencies to lease the NPR if it would reduce the cost of leasing to the Federal government.

Section 343(c) would provide that, unless the Secretary determines and advises the Congress that competitive leasing is not justified, leasing actions would be competitively awarded to the highest qualified bidder, and that the Secretary would have the discretion to determine the appropriate terms and conditions for competitive leasing actions.

Section 343(d) would excuse a lessee of the Federal government's interest in NPR-1 from liabilities of the United States.

Section 344. Privately Owned Lands and Physical Improvements.

Section 344(a) would permit the Secretary to acquire privately owned lands or physical improvements within NPR-1 if necessary to facilitate the leasing action.

Section 344(b) would require that before condemnation proceedings are instituted, an effort ordinarily should be made to negotiate the purchase of the property.

Section 345. Strategic Petroleum Reserve Tie-In; Defense Petroleum Inventory.

Section 345(a) would end the tie-in between the Naval Petroleum Reserve and Strategic Petroleum Reserve fill (42 U.S.C. 6240(a), (b), and (d)) upon the lease of any interest of the United States in NPR-1.

Section 345(b)(1) would amend title I, part B of EPCA (42 U.S.C. 6215 *et seq.*) by adding a new section 168 entitled, "Defense Petroleum Inventory".

Section 168(a) would authorize the Secretary of Energy to build, operate, and fill with crude oil separate storage facilities for a Defense Petroleum Inventory (DPI) to meet the Defense Department's requirements for "petroleum products". (This term, used in EPCA, is defined by EPCA to include crude oil and refined products.) Oil acquisitions for the DPI would not be counted against statutory requirements for filling the Strategic Petroleum Reserve (SPR). This subsection also would make clear that the Secretary may use any of his SPR authorities for creating the DPI.

Section 168(b) would direct the Secretary of Energy to obligate funds available in the Special Account (created under section 346) for the acquisition of ten million barrels for the DPI and for the acquisition or construction of facilities for the DPI. It further would direct the Secretary to make oil available to the DPI out of the SPR while the leasing of NPR-1 is proceeding, in proportion to the progress made in leasing the Federal government's NPR-1 interest.

Section 168(c) would empower the Secretary of Energy to draw down and distribute crude oil in the DPI upon the request of the Secretary of Defense, and would exempt that drawdown from SPR drawdown requirements and from Federal contracting laws and regulations, but would stipulate that DPI drawdown shall not adversely affect SPR drawdown. (The Departments of Energy and Defense intend to negotiate a memorandum of understanding designed to assure that drawdown of the DPI would not interfere with any contemporaneous drawdown of the SPR.)

Section 168(d) would require the Secretary of Energy, upon request of the Secretary of Defense and subject to the availability of funds from the Department of Defense, to replace crude oil drawn down from the DPI.

Section 168(e) would provide that the SPR Plan need not be amended to reflect creation of the DPI.

Section 168(f) would require the Secretary of Defense to reimburse DOE for all DPI drawdown and distribution costs, for the cost of any petroleum products acquisition to replace SPR oil draw down on behalf of the DPI, and for any costs of acquisition and storage in the DPI for crude oil in excess of ten million barrels.

Section 168(g) would provide, with respect to reimbursement for the costs of oil acquisition to replace SPR oil that has been dedicated to the DPI and drawn down (as required by subsection (f)(2)), that as oil is received for the DPI as a result of the leasing of NPR-1, it shall be transferred to the SPR in barrel-for-barrel reimbursement for the dedicated SPR oil that has been drawn down.

Section 345(b)(2) would make a technical amendment.

Section 346. Naval Petroleum Reserve Lease Proceeds Special Account and Revenue Sharing with the State of California.

Section 346(a) would establish a fund called the Naval Petroleum Reserves Lease Proceeds Special Account (Special Account) to be available to DOE without fiscal year obligation.

Section 346(b) would provide that all lease proceeds are to be deposited in the Special Account.

Section 346(c) would provide that fifty percent of the proceeds received from royalty payments and seven percent of the bonus payments from NPR-1 are to be paid in seven annual installments.

Section 346(d) would authorize the Secretary of Energy to make expenditures from the Special Account without further appropriation but subject to specific directives or limitations included in appropriation acts. This subsection provides that funds are to be used to carry out the purchase of oil for the ten million barrel DPI or to satisfy obligations related to the leasing action.

Section 346(e)(1) would permit excess funds to be transferred from the Special Account if appropriate and the Special Account is to be abolished upon written notice by the Secretary of Energy to the Secretary of the Treasury that the funds are no longer needed to fulfill the purposes specified in subsection (d). Under this subsection, funds remaining in the Special Account would be credited to the miscellaneous receipts account of the Treasury of the United States.

Section 346(e)(2) would provide that, after abolishment of the Special Account, lease proceeds are to be deposited in the miscellaneous receipts account, except for the payments to the State of California specified in section 346(c) which shall continue to be paid regardless of the status of the Special Account.

Section 346(f) would allow the Secretary of Energy to collect lease proceeds on behalf of the private owner of NPR-1, Chevron Corporation, and to pay over those proceeds to the private owner.

Section 347. Congressional Consultation.

This section would provide that compliance with section 342(b) and 342(d) of this subtitle shall be considered to satisfy the requirements of sections 7431(a) and 7431(b), title 10 of the United States Code, which effectively call for Presidential approval and Congressional consultation before any NPR lease takes place, and would require the Attorney General to prepare a report on the anticipated effects of a lease contract on competitiveness.

Section 348. Effect on School Lands Grant.

Section 348(a) would extend the authority to lease to sections 16 and 36 in NPR-1.

Section 348(b) would provide that a payment may be made to the State of California only after (1) the State files a motion to dismiss, with prejudice, the lawsuit it filed against the United States in November 1987 and (2) the State forfeits, by written agreement, any rights to the "school lands" and to indemnity lands.

Section 349. Conforming Amendments.

Section 349(a) would repeal section 501 of Public Law 101-45, which prohibits the Executive branch from expending, directly or by contract, appropriated funds to study the potential transfer out of Federal ownership of NPR-1 or NPR-3 and negotiating changes to the Unit Plan Contract with Chevron when the purpose is to prepare for divestiture.

Sections 349(b) and (c) would revise section 7422 of title 10, United States Code, to eliminate the prohibition against leasing NPR-1 or NPR-3, and the triennial NPR continued-production determination.

Sections 349(d) through (j) are technical amendments to delete provisions involving the requirements for, or references to, the continued-production decision and provisions that are inconsistent with the leasing authorization.

Section 349(e) would revise section 7433(b) of title 10, United States Code, to accommodate the depositing of lease proceeds into the Special Account.

Subtitle C—Oil pipeline deregulation

Section 351. Short Title.

Section 351 would provide a short title for this subtitle, "Oil Pipeline Regulatory Reform Act".

Section 352. Findings and Purposes.

Section 352 would make findings to support the subtitle and state its purposes.

Section 353. Regulatory Reform and Deregulation.

Section 353 of this subtitle would add new sections 408, 409, 410, and 411 to the DOE Organization Act as follows:

Section 408—Regulation of pipelines. Section 408 of the DOE Organization Act would terminate existing FERC regulations and regulatory authority over oil pipelines. These would be replaced with new streamlined common carrier obligations contained in new section 409 and with new competition-based priced cap regulation contained in new section 410 for those pipelines that have market power in particular markets.

Section 408(a) would define several terms that are used in sections 408, 409, and 410. In particular, it would exclude the Trans-Alaska Pipeline from coverage under this subtitle.

Section 408(b)(1) would terminate existing Commission regulatory authority sixty days after this subtitle's effective date. It also would provide that on that day, the new streamlined common carrier obligations contained in new section 409 would become effective with respect to all pipelines. In addition, from that date until a list of pipelines subject to adjudication is published under section 408(b)(2)(C), the rates of all pipelines would be regulated under the price cap regulation set forth in section 410.

Section 408(b)(2) would give the Attorney General and any interested person the opportunity to petition the Secretary of Energy for an adjudication to determine whether the new rate price cap regulation set forth in section 410 of the DOE Organization Act should be continued for a particular pipeline in a particular market because it is in the public interest. These petitions must be filed by the Attorney General within one hundred and twenty days of the subtitle's effective date and by interested persons within one hundred and eighty days.

In determining which pipelines and which markets should be the subject of a petition for an adjudication, the Attorney General would be guided by the methods, assumptions, standards, and definitions set forth in the Department of Justice's economic study of the oil pipeline industry released in May 1986, and entitled "Oil Pipeline Deregulation." An interested person petitioning for an adjudication would not be bound by the Department of Justice's study, nor would the Secretary of Energy be bound by the study in the conduct of an adjudication.

In preparing petitions, the Attorney General would have to define relevant markets. The term "market" is not defined in this subtitle because the definition inherently must be based on the facts of each particular case. Depending on the relevant facts (such as availability and price for alternative sources of products), a relevant market could be as large as an entire economic region covering parts of several States or as small as a single jet-fuel terminal at an airport.

Section 408(b)(2)(C) would require the Secretary of Energy to publish, not later than two hundred and seventy days after the effective date of this subtitle, a list of all adjudications that the Secretary had decided to conduct. For each market for which an adjudication is to be conducted, price cap regulation of the subject pipeline in the subject market would continue in effect while the Secretary conducts the adjudicatory proceeding. If no petition is filed with respect to a particular pipeline in a particular market, or if the Secretary does not find sufficient cause to conduct an adjudication, that pipeline's pricing in that market is deregulated completely upon publication of the list.

Section 408(b)(3) contains the standard the Secretary of Energy would use in adjudication of a pipeline's regulatory status. The Secretary could find that price cap regulation was in the public interest only if it is demonstrated that this regulation is necessary to constrain the exercise of substantial market power. An adjudication of a pipeline's regulatory status would be required to be completed within one year, unless the Secretary determined that unusual circumstances necessitate a delay, in which case the Secretary may take a maximum of two years to issue the finding.

If, after conducting the proceeding, the Secretary of Energy finds that price cap regulation of the pipeline in the subject market is in the public interest, this regulation would continue indefinitely. If the Secretary does *not* so find, price cap regulation would terminate promptly. Settlement by contract of disputes regarding whether a particular pipeline should be subject to price cap regulation in a particular market would be allowed.

Section 408(c) contains provisions for reconsideration, in the light of changed circumstances, whether price cap regulation of a given pipeline in a given market is in the public interest.

Section 408(d) would provide for the Attorney General to participate in any adjudicatory proceedings regarding the regulatory status of a pipeline under section 408, and would provide that in so doing the Attorney General would be guided by the underlying definitions and assumptions of the 1986 Justice Department study.

Section 408(e) would provide that new pipelines—those that were not in service and not under construction on January 1, 1991—would not be subject to either existing Commission regulatory jurisdiction or the new price cap regulation contained in section 410, unless jurisdiction were determined by the Secretary of Energy to be in the interest of national defense. "Under construction" is not defined in the bill. It is intended that this term be construed to cover pipelines for which ground has been broken, or which otherwise have progressed under expectation of regulation to the point of preempting the development of an alternative pipeline serving the same markets.

Section 408(f) would clarify that:

(1) existing Commission regulation of, and, impliedly, any Commission regulatory proceedings related to, oil or other products transported before deregulation of a pipeline would not be affected by deregulation,

(2) the new price cap regulation of a pipeline will be prospective only and not apply to previous transportation, and

(3) Commission pipeline regulation terminated under section 408, including regulation of new pipelines, will not revert to DOE, the Interstate Commerce Commission or any other agency, unless the Secretary of Energy determines it is in the interest of national defense to return it to the Commission.

Section 408(f) would provide further that pipeline regulation terminated under section 408 would not revert to a State agency, except that existing State authority over intrastate pipeline transportation would remain unchanged.

Section 408(g) explicitly would authorize the Secretary of Energy and the Attorney General to promulgate rules and regulations necessary or appropriate to carry out their responsibilities under section 408.

Section 408(h) would provide that the United States Court of Appeals for the D.C. Circuit have original, exclusive judicial review of any administrative action taken under section 408. This section also would provide that any action of the Attorney General under section 408, including a decision to petition or not to petition for an adjudication of a pipeline's regulatory status, would be considered an action committed to agency discretion and not subject to judicial review.

Section 408(i) would allow the Secretary of Defense to petition the Secretary of Energy for adjudication of whether Commission rate regulation of an unregulated pipeline would be in the interest of national defense, if the petition is not filed within two years of the termination of Commission rate regulation of the pipeline subject to the petition of a prior adjudication under this section regarding that pipeline. The Secretary of Energy may hold the adjudication and, if it is in the national defense interest, may order the pipeline subject to Commission rate jurisdiction under section 410.

Section 409—Common carrier status: contracts. Section 409 contains the new, streamlined common carrier obligations that would be substituted for current, complex nondiscrimination regulation under the Interstate Commerce Act when that regulation terminates sixty days after the effective date of this subtitle. Section 409 also would clarify the authority of pipelines to enter into contracts for the transportation of oil and oil products.

Section 409(a) would establish the basic common carrier obligations of oil pipelines. It would provide specifically that regulatory jurisdiction under this section would not extend to rate matters. While this section would require nondiscrimination as to access, terms, and conditions under common carriage, it would not permit review of rates under that guise as a form of "back-door" rate re-regulation. Pipelines will be free to charge different rates to different shippers and would not be found to violate this section for that reason.

Section 409(b) would require pipelines to publish and file with the Commission the terms and conditions (other than rates) that apply to their standard common carriage transportation of oil and oil products.

Section 409(c) would govern pipelines' contracts that differ from the standard common carriage terms and conditions. It would provide that in markets in which there is Commission rate regulation, differing contracts would be permitted, but only so long as the regulated service is available at no more than the maximum rate. By "available" it is meant that shippers could obtain the regulated service at no more than the maximum rate, free of capacity or other constraints.

Section 409(d) would authorize the Commission to enforce compliance with section 409, and to promulgate any necessary rules and regulations.

Section 410—Commission rate regulation. Section 410 would set forth the new "price cap" regulatory system that would be substituted for current cost-of-service and rate-of-return regulation under the Interstate Commerce Act when that regulation termi-

nates sixty days after the effective date of this subtitle.

Section 410(a) would establish the basics of price cap regulation. Section 410(a)(1) would provide the first key component of price cap regulation—"base rates." These would be established as recent rates that were not subject to Commission investigation (or that were adjudicated or the subject of a settlement), increased by the Producer Price Index up to the effective date of the new price cap regulatory system.

Section 410(a)(2) would allow for a one-time reduction of a base rate upon a showing that, due to pipeline market power, the base rate is "significantly higher" than would be predicted under competitive conditions. The Secretary of Energy would reduce the rates in markets in which the difference between the base rate and the predicted competitive rate is statistically significant. (A commonly accepted standard for significance is that there is less than a five percent probability that the difference is due to random fluctuations.) In markets in which rate reductions are appropriate according to this criterion, the Secretary of Energy would bring them in line with the rates that correspond to the statistically significant level (that is, at five percent) rather than the statistically predicted rate.

A base rate adjustment proceeding would begin only after the Secretary of Energy has found that a pipeline has substantial market power under section 408. The procedures for such an inquiry would parallel the section 408 procedures for determining whether a pipeline market will continue to be subject to Commission rate regulation. Any revision would be effective on the date the Secretary orders the reduction, or one year after the Secretary decides to conduct an adjudication, whichever comes first.

Section 410(a)(3) would provide the method for calculating the rate for those pipelines subject to this section. During a transition period, from the date of commencement of Commission rate regulation until the date of publication of the list of adjudications, oil pipeline rate ceilings would be frozen at base rate levels. The Producer Price Index would be used as the inflator and deflator of base rates for the next year. In all subsequent six month periods, the maximum rate would be the prior maximum rate increased or reduced by the percentage change in a "Competitive Pipeline Price Index" (CPPI). The CPPI would be a new index prepared by the Secretary of Energy based on relative changes in pipeline rates in competitive unregulated markets.

The Secretary of Energy would have discretion to select the data used to calculate the CPPI in order to create an index that accurately represents prices in markets with effective competition. The Secretary would be permitted to use a substitute index, but only if the Secretary determines that calculation of the CPPI is unduly burdensome.

Section 410(a)(4) would establish the lawfulness of all rates that do not exceed the maximum rates calculated in accordance with section 410(a)(3). This subsection also would make clear that any *lower* rate also would be lawful. However, if a pipeline makes a lower rate available to a shipper with which the pipeline is affiliated, then the pipeline would be required to make the lower rate available to all shippers on the same terms and conditions.

Section 410(a)(5) would require the Commission to publish base rates, rate adjustments, and maximum rates.

Section 410(b) contains an additional limitation on the actions of pipelines subject to price cap regulation in particular markets. This limitation is designed to prevent evasion of price cap regulation. Under this subsection, pipelines would not be permitted to tie the taking of other products or services to pipeline services. This would prevent pipelines from evading rate cap regulation by, for example, charging an artificially high price for some unregulated good or service as a prerequisite for access to regulated pipeline service.

Section 410(c) would provide for the nonregulation of expanded capacity in price-capped markets, in order to encourage this expansion. It also would provide the Commission with explicit authority to promulgate regulations regarding allocation of rights to use pre-existing capacity in a manner consistent with effective Commission rate regulation and the common carrier requirements of section 409.

Section 410(d) would authorize the Commission to enforce section 410 and to promulgate any necessary rules and regulations.

Section 410(e) would authorize explicitly the Secretary and the Attorney General to promulgate any rules and regulations necessary or appropriate to carry out their responsibilities under section 410.

Section 410(f) would provide that the United States Court of Appeals for the District of Columbia Circuit have original, exclusive judicial review of any administrative action taken under section 410. This section also would provide that any action of the Attorney General under section 410, including a decision to petition or not to petition for a rate reduction, would be considered an action committed to agency discretion and not subject to judicial review.

Section 411—Report to Congress. Section 411 would provide for a report to Congress by the Secretary of Energy five years after all adjudications under section 410 have been concluded.

Section 354. Conforming Amendments.

Section 354 of this subtitle contains certain conforming amendments. It would amend section 402(a) of the DOE Organization Act (42 U.S.C. 7172(2)) to make the authorities and functions transferred by section 402(a) subject to this subtitle. It also would amend section 402(a) of the DOE Organization Act (42 U.S.C. 7174(a)) to clarify that the Secretary may issue regulations implementing this subtitle without referring the rule to the Commission under section 404.

Section 355. Applicability of Antitrust Laws.

Section 355 would assure the continuing applicability of the antitrust laws to oil pipelines. The subtitle is not intended to affect in any manner the applicability of the antitrust laws to transportation of oil or products.

Section 356. Severability.

Section 356 would provide for separability should any of this subtitle's provisions or their application be held invalid.

TITLE IV—ELECTRICITY GENERATION AND USE

Subtitle A—Public Utility Holding Company Act reform

Section 401. Definitions.

Section 401 would:

(1) Define "exempt wholesale generator". An exempt wholesale generator (EWG) would be a person who is engaged directly, or indirectly, through an affiliate, in the business of selling electricity at wholesale from an eligible facility. A registered holding company affiliate in existence on the date of enactment of the National Energy Strategy Act could qualify as an EWG only with the consent of the Securities and Exchange Commission (SEC).

(2) Define "eligible facility". An eligible facility would be a facility or a portion of a facility used for the generation of electricity to be sold exclusively at wholesale. This term would include certain interconnection facilities. It would not include a facility, or a portion of a facility, if a rate or charge for the facility's construction or for electricity it produces is in effect under the laws of any State on the date of enactment of the National Energy Strategy Act.

(3) Define "electric consumer". An electric consumer would be any person, State or local authority or agency, or Federal agency to which electricity is sold other than for purposes of resale.

(4) Would incorporate, by reference, other terms as defined in the Public Utility Holding Company Act (PUHCA).

Section 402. Exempt Wholesale Generators.

Subsection (a) would exempt EWGs from PUHCA.

Subsection (b) would provide that a holding company's eligibility for exemption under section 3(a) of PUHCA is not affected by the fact that one or more of the companies within the holding company is an EWG, unless the SEC, by order upon application of an affected State commission or other interested party, and considering any views of affected State commissions, terminates the exemption upon determining that: (1) the holding company has not established appropriate means to determine the allocation of costs between the EWG and any other company within the holding company that provides electric service to electric consumers; or (2) the EWG is a party to a contract for sale of electricity to any other company within the holding company that provides electric service to electric consumers, without each affected State commission having given its prior approval of the contract under State law.

Subsection (c) indicates that the term "affected State commission" means any State commission that has jurisdiction to regulate a holding company's associate company, affiliate, or subsidiary company that provides electric service to electric consumers.

Subsection (d) would allow a registered holding company to own an interest in an EWG without receiving SEC approval, so long as the EWG is not a party to a contract to sell electricity to any company within the holding company that provides electric service to electric consumers, unless each affected State commission has given its prior approval to the contract under State law.

Subsection (e) would allow the SEC to retain jurisdiction over the issuance of securities by a registered holding company for purposes of financing the acquisition of an EWG, the guarantee of an EWG's securities by a registered holding company, and the formation of certain business relationships between an EWG and a registered holding company or its associate or affiliate companies, except that: (1) section 11 of PUHCA would not prohibit the ownership of an interest in the business of an EWG by a registered holding company (regardless of the location of the facilities owned by the EWG), and that ownership is considered to be consistent with the operation of an integrated public utility system; and (2) the ownership of an interest in the business of an EWG by a registered holding company (regardless of the location of facilities owned or operated by the EWG) is considered to be reasonably incidental, or economically necessary or appropriate to the operations of an integrated public utility system.

Section 403. Ownership of EWGs and Qualifying Facilities.

Section 403 would provide that a person's ownership of an EWG does not result in that person's being considered as being primarily engaged in the generation or sale of electric power within the meaning of the FPA. This would prevent the loss of impairment of the utility's right to own generation facilities which are "qualified" under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

Section 404. Federal and State Authorities.

Subsection (a) would prevent FERC from finding that a rate which an EWG seeks to charge for electricity to be sold at wholesale is "just and reasonable" within the meaning of the FPA if the rate allows the EWG to receive undue advantage from the existence of an affiliate relationship between itself and a purchaser.

Subsection (b) would provide that a State commission may determine the prudence of a wholesale power purchase by an electric utility that provides electric service to electric consumers, and may disallow recovery of costs determined to be imprudently incurred, unless the wholesale purchaser has no alternative to accepting the amount of power or costs allocated to it by FERC in setting a wholesale rate or charge that is based on an allocation of power or costs among: (i) companies of a registered holding company; or (ii) companies that operate on an integrated basis under an agreement approved by FERC.

Subtitle B—Power Marketing Administration Repayment Reform

Section 411. Short Title.

Section 411 would cite the short title of this subtitle as the "Power Marketing Administration Timely Payment Act".

Section 412. Definitions.

Section 412 would define "Power Marketing Administration", "power investment," "interest rate", and "compound-interest repayment schedule". These definitions would make the legislation applicable to each power project financed by appropriations and placed in service. The Alaska Power Administration is not included in this legislation because it is expected to be divested from Federal ownership by fiscal year 1992. This legislation would not apply to irrigation investments assigned to be prepaid power by revenues. The compound-interest repayment schedule would be essentially like a home mortgage. The level annual payment would be derived by dividing the unpaid principal balance of the power investment by the interest factor for the present value of an annuity. The interest factor is expressed by the formula PVIFAi,n where "i" is the interest rate applicable to the investment and "n" is the number of years remaining in the repayment period. The result is equal annual payments comprised of principal and interest for each power investment. The interest rate would be defined differently for projects already in service and those that go into service after September 30, 1991. For investments placed in service after September 30, 1991, the interest rate would be the average yield on government securities with maturities comparable to the repayment period of the investment during the last month of the preceding year which, due to the time lag involved in determining the interest rate described in section 412(3)(A), allows the power marketing administrations to calculate interest during a given fiscal year using an actual versus a projected interest rate. For projects placed in service before October 1, 1991, the interest rates would be the yield of long-term government securities at the time the power investment was placed in service.

Section 413. Repayment of Principal.

Section 413 would modify repayment procedures for the power marketing administrations. Power investments, whether old or new, would be scheduled for amortization on a compound-interest repayment schedule. Annual payments would be at least the annually scheduled amount. Section 413(a) would provide the specific method for calculating the scheduled payments. For projects with an in-service date before October 1, 1991, the repayment period would equal the balance of the remaining average service life or the number of years remaining in a fifty year repayment period, whichever is less. For projects with an in-service date after September 30, 1991, the repayment period would equal the average service life, or fifty years, whichever is less.

Under section 413(b), payments exceeding the scheduled annual amount will be credited toward payments required in subsequent years, and would receive an interest credit at the rate determined in section 414(c) until such time as the excess payments are actually credited toward payments received in subsequent years.

A special provision in section 413(c) for the Bonneville Power Administration's (BPA) revolving fund would require principal and interest payments to be made out of net proceeds after deducting interest, premiums, discounts, expenses, or principal amounts of bonds under section 11(b)(8) of the Federal Columbia River Transmission System Act (16 U.S.C. 8381(b)(8)). This would ensure that borrowing through the sale of bonds or repayment of these bonds would not be affected by the proposed legislation.

Section 414. Payment of Interest.

Section 414 would require annual interest payments on unpaid principal and on any deferred principal and interest amounts. Annual interest payments on unpaid principal would be computed using the interest rate calculated in section 412(3). Interest on deferred principal and interest would be charged at an interest rate as specified in section 414(c). Shortfalls of any principal or interest amounts would be paid in subsequent fiscal years before scheduled payments, but would not change the payment schedule. This section would apply to all of the power marketing administrations covered under this subtitle.

Section 415. Changing a Schedule of Payments.

Section 415 would give any of the power marketing administrations, except BPA, the option to change the schedule of principal and interest, from that specified in section 412(4), in the event of a drought, dam failure, or other unexpected natural event which results in a significant reduction in the availability of hydro-power resources. Before a power marketing administration other than BPA could establish a new schedule of payments, it would have to obtain approval from FERC. Section 413(c) of this subtitle would apply to BPA's scheduling and payment of deferred annual payments. Under this section BPA may make its annual payments to the Treasury of the United States only from its "net proceeds".

Section 416. Effective Date.

Section 416 would make October 1, 1991, the effective date of this subtitle.

TITLE V—NUCLEAR POWER

Subtitle A—Licensing reform

Section 501. Combined Licenses.

Subsection (a) would add new subsections (b) and (c) to section 185 of the Atomic Energy Act of 1954 (AEA) to:

(1) require the Nuclear Regulatory Commission (NRC) to develop a combined construction and operating license that resolves all safety issues, including emergency planning, prior to start of construction, in one combined process with a single adjudicatory hearing;

(2) provide within the combined license for inspections, tests, and analyses, and their acceptance criteria to confirm that all conditions of the license have been met;

(3) require an application for a combined license to include a State, local, or utility emergency plan, although it is expected that current arrangements providing for NRC consultation with the Federal Emergency Management Agency on offsite emergency planning will continue;

(4) require that the combined license (A) identify the inspections, tests, exercises (including any integrated exercises of offsite emergency response plans), and analyses required for the emergency plan and the acceptance criteria for their satisfactory completion; (B) codify NRC's realism rule; and (C) require that offsite emergency planning issues which arise after combined license issuance, including late withdrawal of a State or locality from participation in emergency planning, be resolved only in a proceeding, either in response to a petition or at NRC's initiative to modify or suspend operation under the combined license;

(5) require NRC, at appropriate intervals during construction, to publish in the Federal Register notices of the successful completion of inspections, tests, and analyses;

(6) provide an opportunity for an informal preoperational hearing on whether a plant as constructed has conformed with the acceptance criteria of the license;

(7) require NRC to notify the Attorney General if significant changes have occurred in the licensee's activities or proposed activities subsequent to issuance of a combined construction and operating license, thereby affording the same opportunity for competitive review at the operational stage as exists today when construction and operating licenses are issued separately, under procedures established by the NRC for this review, including hearing procedures, which would parallel those applied to conformance safety issues under revised section 185(b); and

(8) require NRC consideration of amendments to combined licenses to be the same as for amendments to operating licenses under section 189(a) of the AEA, and provide that NRC not delay preoperational activities or operation pending completion of a hearing on an amendment if NRC determines that the amendment involves no significant hazards consideration.

Section 502. Rulemaking.

Section 502 would require NRC to propose regulations implementing this subtitle within one year of enactment of this subtitle.

Section 503. Conforming and Technical Amendments.

Section 503 contains conforming and technical amendments to the AEA.

Section 504. Effect On Pending Proceedings.

Section 504 would make this subtitle apply to all proceedings pending before NRC on the date of enactment of the National Energy Strategy Act.

Subtitle B—Nuclear waste management

Section 511. Repository Site Characterization.

Section 511 would add new paragraphs to section 113(a) of the Nuclear Waste Policy Act of 1982 (NWPA).

New paragraph (2) would provide that a Federal agency administering a law or regulation that imposes a requirement for a permit, license, right of way, certification, approval, or other authorization on site char-

acterization activities conducted under NWPA, to administer such a requirement itself, without regard to whether it has been or could be delegated to a State.

New paragraph (3) would provide that a permit from a State government, local government, or Indian tribe would not be necessary for the Secretary of Energy to conduct site characterization studies.

New paragraph (4) would require that the Secretary of Energy consider the views of State, local, and tribal officials regarding the substantive provisions of State, local, and tribal laws affecting site characterization activities.

New paragraph (5) would provide that an action to contest the constitutionality of the new section 311(a) must be brought within sixty days of its enactment. It also would provide that in such an action the court may not enjoin the site characterization activities.

New paragraph (6) would provide that the new paragraphs apply only to site characterization work begun before the Secretary of Energy submits an application for construction authorization for a repository under NWPA.

New paragraph (7) would allow the Nuclear Waste Negotiator, whose position is established under title IV of the NWPA, to include in an agreement negotiated under that title, or exclude from it, provisions contained in the paragraphs added by this subtitle without affecting the reasonableness or appropriateness of the agreement.

Section 512. Monitored Retrievable Storage Facility.

Section 512 would remove links between the construction of the permanent repository and the construction of the monitored retrievable storage facility.

TITLE VI—RENEWABLE ENERGY

Subtitle A—Purpa size cap and co-firing reform

Section 601. Federal Power Act Definitions.

Section 601 would:

(1) make technical corrections to section 3(17) of the FPA to insure that eligible solar, wind, waste, or geothermal power production facilities are exempt from all power production limitations;

(2) add biomass and hydropower to the technologies exempt from power production limitations; and

(3) define "alternative power production facility." An alternative power production facility could take advantage of relaxed cofishing restrictions, would not be restrained by power production limitations, and would sell the electricity it produces in a competitive market environment.

Section 602. Utility Purchasing and Exemptions.

Section 602 would:

(1) Make technical corrections to section 210 of PURPA;

(2) Require an electric utility to offer to purchase electric capacity from an alternative power production facility only if the purchase takes place in a competitive market environment; and

(3) Make an alternative power production facility or an eligible solar, wind, waste, biomass, hydropower or geothermal facility eligible for exemptions from FPA, PUHCA, and from State laws and regulations if the facility meets certain requirements.

Subtitle B—Hydroelectric power regulatory reform

Section 611. Regulatory Reform.

Section 611 would add three new subsections to section 4 of the FPA to improve and simplify FERC coordination of various activities related to granting a license for a hydroelectric project and preference for licenses issued by the Commission.

New subsection (h) would require an applicant for a license for a new or existing hydroelectric facility, before submitting the application, to consult with certain agencies and Indian tribes and then submit to the Commission a plan for performing the environmental, economic, engineering, and other studies required for the application. The Commission would approve or modify the plan. Once the plan is approved, the Commission could modify it only if it is in the public interest.

New subsection (i) would require FERC to coordinate a consolidated review by interested Federal agencies, State agencies, and affected Indian tribes of each application for a license for a new or existing hydroelectric facility after giving reasonable notice of the application and the review. The Commission would be the lead agency for purposes of compliance with NEPA. A NEPA review completed by the Commission as part of the consolidated review would satisfy the requirements of NEPA for all agencies for the project subject to the review. The Commission's license decisions and any additional approvals required by other agencies would take into account the results of the consolidated review. The Commission also would be allowed to set time limits for actions related to the review. If these time limits were not met, the Commission would be allowed to continue to process and take any appropriate action on the application.

New subsection (j) would provide that the Commission has the final authority to decide what provisions are included in a license for a project at an existing dam or conduit. This subsection is not meant to imply that the Commission need not comply with other provisions of this section. For example, it still must make the findings and give the proper consideration to particular items required under subsection (e). This subsection also would provide that if there is a conflict between the terms of a license issued by FERC and one issued by another Federal or by a State agency for the same project at an existing dam or conduit, the Commission license would prevail.

Section 612. Removal of Commission Authority Over Five Megawatt Projects.

Section 612 would amend section 10(i) of the FPA to remove Commission authority over a new hydroelectric project of five megawatt capacity or less. It also would allow the licensee of an existing project with that capacity to elect not to be regulated under this part by surrendering its license.

TITLE VII—ALTERNATIVE FUEL

Subtitle A—Alternative and dual fuel vehicle credits

Section 701. Alternative and Dual Fuel Cap Removal.

Section 701 would eliminate limits on the credit toward complying with the corporate average fuel economy (CAFE) standards available to manufacturers for the production of light duty alternative fuel vehicles and certain dual fuel vehicles.

This section would retain the provision that requires the Secretary of Transportation not to consider the fuel economy of alcohol or natural gas powered automobiles when determining whether to amend the CAFE standards under section 502 of the Motor Vehicle Information and Cost Savings Act. The section also would retain the provision that requires the Secretary of Transportation to consider cars capable of operating on gasoline or diesel fuel and either alcohol or natural gas as operating exclusively on gasoline or diesel fuel when making that determination.

Subtitle B—Alternative transportation fuels

This subtitle would require the owners of fleets of certain types of motor vehicles located in certain large cities to purchase alternative fuel vehicles. By requiring these purchases, the subtitle would create a ready, captured market for alternative fuel vehicles as a powerful market incentive both for automobile manufacturers to supply these vehicles and for companies to erect facilities to dispense alternative fuels.

Section 711. Definitions.

Section 711 would define key terms used in this subtitle. "Covered person" would be a person who must comply with the alternative fuel vehicle acquisition requirements in section 712. "Person" would be defined to include State and local governments and exclude the United States. An "alternative fuel vehicle" would be a motor vehicle that can operate on alternative fuel, either (1) one that can operate solely on alternative fuel or (2) a "flexi-fueled vehicle," which is a vehicle that can operate on either alternative or non-alternative fuel. "Alternative fuel" generally would include fuels that are not petroleum-based or are composed eighty-five percent or more of methanol, ethanol, or other alcohol. A "fleet" subject to the subtitle would be defined as a number of motor vehicles, all or part of which are centrally fueled or capable of being centrally fueled, controlled by a person. A fleet would not include daily rental vehicles, vehicles for sale by dealers, test vehicles, law enforcement vehicles, emergency vehicles, military tactical vehicles, and non-road vehicles.

Section 712. Acquisition of Alternative Fuel Vehicles.

Section 712 would establish a schedule for persons who control fleets composed of certain types of vehicles and located in cities with certain characteristics to follow in acquiring vehicles for their fleets.

Subsection (a) would apply to a person who controls fleets of (1) at least ten trucks, buses, or cars, with some exceptions, or a combination of at least ten of those vehicles located in large cities with air of high ozone content or (2) at least twenty trucks, buses, or cars, with some exceptions, or a combination of at least twenty of those vehicles located in large cities regardless of the ozone content. That person would be required to begin in 1995 to make a certain percentage of their annual vehicle acquisitions alternative fuel vehicles. The percentage would increase until in 2000 and afterwards ninety percent of the acquisitions would be alternative fuel vehicles.

Subsection (b) would apply to a person who controls a fleet of at least 10 urban buses, except for intercity urban buses, located in large cities with air of high ozone content or 20 in large cities regardless of the ozone content. It would phase in a percentage acquisition requirement for that person beginning with fifty percent in 2000 and reaching ninety percent in 2003 and afterwards.

Section 713. Exception.

Section 713 would provide that the subtitle not apply to a covered person if the Secretary of Energy determines that no alternative fuel vehicles are available for acquisition when the subtitle becomes applicable to the fleet. The subtitle would apply to that person when alternative fuel vehicles become available.

Section 714. Credits.

Section 714 would provide credits to a covered person who acquires more alternative

fueled vehicles than are required by this subtitle or acquires them earlier than required. The Secretary of Energy would provide one credit for each extra or early vehicle. The person could then bank, transfer, or use the credit.

Section 715. Reports.

Section 715 would authorize the Secretary of Energy to require the reports necessary to implement this subtitle.

Section 716. Enforcement.

Section 716 would provide a method for the subtitle to be enforced through assessing civil penalties.

Section 717. Implementation.

Section 717 would provide that the Secretary of Energy issue regulations to implement the subtitle, thus making the Secretary of Energy responsible for administering the alternative fuels program established by this subtitle.

TITLE VIII—INNOVATION AND TECHNOLOGY TRANSFER

Section 801. Stevenson-Wydler Amendments.

The Stevenson-Wydler Technology Innovation Act of 1980 (Stevenson-Wydler) would be amended to allow Federal agencies to secure copyright for computer software developed under certain cooperative research and development agreements between government-owned and operated laboratories, private sector contractors, and other parties. The definition of computer software in Stevenson-Wydler would be expanded to include associated documentation, supporting materials or user instructions.

Section 802. Royalty Payments to Authors.

This section would expand Stevenson-Wydler to provide royalties to Federal employees who are authors of computer software. Currently royalties may be paid to Federal employees only for inventions and not for software.

Section 803. Technical and Conforming Amendments.

Section 12(c) of Stevenson-Wydler would be amended to include computer software.•

• Mr. WALLOP. Mr. President, recent events in the Persian Gulf have highlighted the need to move forward on the formulation of a long-term, comprehensive, and consensus-based national energy strategy to foster both domestic energy production and the efficient use of all available energy supplies.

Fortunately, over the last 18 months the Bush administration has engaged in a thorough public review and discussion of the energy policy options facing our Nation. The administration is to be commended for their effort.

The legislation which Senator JOHNSTON and I are introducing today by request is the product of that public hearing process. As expected, the administration's legislation contains many of the same elements as S. 341, the National Energy Security Act of 1991, that Senator JOHNSTON and I introduced on February 5. The administration's bill also contains provisions that I support.

Both measures recognize that if any national energy strategy is to be successful it must be sufficiently flexible for all domestic energy supply and demand alternatives to compete in the marketplace. Each measure contains energy supply and demand initiatives which provide a balance between energy production and conservation initiatives. They each also provide incentives which foster greater use of domestic supplies of fossil fuels—natural gas, oil, and coal—which the United States has in abundance.

Both measures recognize the need to more effectively deliver new technologies developed in America to the marketplace as a source for new businesses and jobs. The commercialization of energy technologies is a priority of Federal energy research and development programs. Each measure supports greater use of cooperative agreements and joint ventures in the areas of advanced nuclear reactor technologies, electric vehicles, renewable energy resources, high efficiency heat engines, and the use of natural gas.

Each measure encourages the commercialization and greater use of renewable energy and energy efficient alternatives within our economy; in the construction and renovation of buildings, including Federal buildings, and throughout industry. Both measures recognize the critical need to assure nuclear power as an energy option for the United States and the world.

It ought to go without saying that until we can once again assure that nuclear power is a viable option in our Nation's energy future, the economic and foreign policy implications of our dependence on imported oil will remain a threat to our Nation's economic health and energy security.

Finally, and perhaps the most significant area addressed by this legislation is the removal of regulatory barriers that unreasonably restrict the availability of domestic energy supplies such as natural gas or hydroelectric power, or constrain the deployment of new, advanced, and often more environmentally benign energy technologies.

Mr. President, as the Congress moves forward toward enactment of a comprehensive national energy policy, we will blend many of the administration's proposals with those in our own legislation. This will be a joint effort, and we wish to emphasize our combined determination to enact, early in the 102d Congress, a national energy strategy which melds the many initiatives contained in these legislative proposals into a comprehensive bill that addresses our national energy problems.

In making this statement, I fully recognize an undertaking of this magnitude will not be without controversy, but the American people deserve to have their elected leaders address these issues.•

By Mr. BOREN (for himself, Mr. BENTSEN, Mr. BYRD, and Mr. BAUCUS):

S. 571. A bill to amend the Export-Import Bank Act of 1945 and the Foreign Assistance Act of 1961 to reform United States bilateral economic assistance programs, to promote the purchase of United States goods and services, to promote democracy and privatization in Eastern Europe, and for other purposes; to the Committee on Foreign Relations.

AID FOR TRADE ACT

Mr. BOREN. Mr. President, now that the crisis in the Persian Gulf is over, we in Congress and the administration must refocus our attention and concern to the long-term challenges facing our country. As we look back on the crisis, however, one central lesson we should learn is that the United States remains a world leader based on our military and diplomatic position. Only the United States could have responded to the crisis by quickly providing the necessary military strength to deter Saddam Hussein from moving against Saudi Arabia, and eventually to reverse Iraq's aggression against Kuwait.

But the other central lesson from the crisis is that economic interests, in this case the world's oil supply, are at the core of our Nation's security. Now, with the war over, we must review all our Nation's policies and programs to see how they enhance our economic position and long-term national security.

Today, I rise to join with Senator BYRD, Senator BENTSEN and Senator BAUCUS to introduce the Aid for Trade Act of 1991, which will reform foreign aid programs to meet the needs of a changed world.

Mr. President, in the post cold war era economic strength is quickly replacing military might as the key to international leadership. America's leadership role for the 1990's and into the 21st century is in jeopardy if we do not recognize this shift and readjust our priorities accordingly. We must keep in mind that our own economic position is dramatically weaker than it was four decades ago at the beginning of the cold war when we had a 70 percent share of world assets and world markets. Now, with limited resources, a huge Federal deficit, a substantial trade deficit, and an 18 percent share of world assets and markets, we must move quickly.

We must leverage our foreign policy assets in order to enhance our economic power. We must use our foreign aid program to develop new long-term markets in order to restore some of our lost share of world trade. Our foreign aid program can and should be used to build lasting relationships with the new democracies of the world. We must bring our foreign aid program back into balance so that our aid is used to buy more American-made products, so that exports are increased and jobs are created at home.

Mr. President, a truly historic event occurred only 2 weeks ago, but due the gulf war received little attention—the

Warsaw Pact officially disbanded as a military union. The United States responded to changes in Eastern Europe during the last session of Congress by providing aid to countries such as Poland and Hungary. We provided almost $1.8 billion in aid, but almost all in cash. While only 14 percent of our aid outside of debt relief and stabilization was in the form of export credits to send United States goods to these countries, almost 99 percent of Japanese aid and 96 percent of German aid outside of stabilization were in the form of credits to send their goods to Eastern Europe.

It is time we respond to these changes the way our economic competitors do. By providing "Buy American" credits now, then in the future when these countries need spare parts they will be American spare parts. When they need service, American firms can do the job.

Mr. President, the events in Eastern Europe highlight a change in the world that has not been translated to reforms here at home. Many emerging democracies and other countries deserving U.S. aid do not have rampant poverty and little industrialization. Instead they are countries in need of basic infrastructure to facilitate economic growth. Whereas the focus of aid in the 1970's was solely on basic human needs, and aid in the 1980's centered on international debt relief, we must now change our aid policy again to meet the needs of countries from Eastern Europe to South Asia and Central America. We cannot fail to meet the basic needs of people in the poorest countries, but aid based on cold war rivalries and outdated ideas on development must be changed.

Mr. President, I ask unanimous consent that an article written by my friend, the Senate President pro tempore, Mr. BYRD, from the Harvard International Review on this important topic be printed in the RECORD at the end of my statement. He has been a leader on this topic in the Senate, and I think all of my colleagues would benefit by reading his article.

Clearly the American people want the system changed, and I believe the American taxpayers deserve a greater return on their foreign aid investment. A recent poll found that 71 percent of Americans think we are spending too much on foreign aid. This comes at a time when foreign aid represents only one-fifth of 1 percent of our GNP, a lower percentage than any of the other top 10 aid donors.

It is time we meet the changes and challenges of what some are calling the new world order. Today we propose to help meet that challenge with our Aid for Trade Act of 1991.

The first part of our bill deals with what we typically consider foreign aid: funds spent by AID—the Agency for International Development, called "bilateral economic assistance." Military aid, food aid, and aid to multilateral development banks are not included in this category.

Within the bilateral economic assistance category, we mandate that 10 percent for fiscal year 1993 be spent on infrastructure capital projects, with this figure increasing to 35 percent over a 5-year period. In 1988, only 14 percent of our economic aid was used for capital projects. In stark contrast, 61 percent of Japan's, 46 percent of Germany's, and 62 percent of Italy's economic aid went to capital projects.

Our economic competitors spent five times more than we did on capital projects. Why? Because they understand that capital projects generate exports. They have recognized the commercial value of using foreign aid funds to build roads, phone lines, and electrical plants, and we have not.

In addition, they know that foreign aid for capital projects is sound development strategy. These economic infrastructure projects represent more of a long-term solution to development problems, a solution that needs to be mixed with poverty alleviation efforts in order to have a comprehensive development strategy.

In a recent Washington Post article on the Japanese aid program, the article highlighted the use of low-interest government financing for the construction of a $600 million powerplant in India, being built by the Mitsui Corp. of Japan. Japan's economic interests were served by the project at the same time India's need for a modern power system was met.

We would create within AID a mixed credit facility to finance these types of capital projects. The administration in its recent report entitled "International Financing and International Economic Competitiveness," advocated the formation of a mixed credit "third window" in AID. Our proposal includes such a third window, led by AID, with that agency contributing $350 million to the facility. In addition, AID along with the State and Commerce Departments, the Export-Import Bank, and the Trade and Development Program are required to come up with a capital projects investment strategy that meets the development needs of other countries as well as our own commercial interests.

We also mandate that cash transfers—cash payments with no strings attached—be decreased. Almost 60 percent of our economic aid under the Economic Support Fund Program, or $2.2 billion, was given out as cash transfers in fiscal year 1990. This bill puts a ceiling on cash transfers so that they represent no more than 50 percent of our ESF aid in fiscal year 1993, with this figure decreasing until the ceiling is 10 percent in fiscal year 1997. However, cash transfers which are used to buy U.S. goods and services or which are used to pay back U.S. debt would not be subject to this ceiling. We are not concerned with foreign aid funds that come back to the United States. We are concerned with those funds that are simple handouts.

One of the other primary reasons that foreign aid funds are not spent on U.S. goods and services is that AID's waiver system has become extensive and abused. Our bill would attempt to decrease the unnecessary use of waivers that result in little accountability, and no return for the U.S. taxpayer.

Mr. President, the second part of the Aid for Trade Act would attack the problem of tied aid credits. Tied aid credits are concessional loans made to developing countries which must be used to import goods and services from the donor country. They are usually used in order to help a company from the donor country capture the bid on development projects which are often very attractive as an entrance into new, strategic, high-growth markets.

Our economic competitors are frequent users of tied aid credits. From 1984 to 1987, offers of tied aid credits from other developed countries rose from $5 billion in 1984 to $12 billion in 1987. The United States, however, has rarely used tied aid credits. While our economic competitors incorporate these credits into their foreign aid programs, we give almost all our aid in grants. From 1984 to 1987, 94 percent of our foreign aid was in the form of grants, while Japan gave only 10 percent in grants and France gave only 15 percent.

Mr. President, while our economic competitors embrace tied aid credits, we are unwilling to use them, labeling them unfair and preferring to concentrate our efforts on ineffective negotiations which have only managed to make tied aid credits marginally more expensive. In fact, according to the OECD, making tied aid credits more expensive simply decreases aid available to the poorest countries.

Meanwhile, U.S. exporters are barred from markets worth billions of dollars. Experts estimate that $2.4 to $4.8 billion of U.S. exports are lost annually because of this discrepancy between their amount of tied aid credit activity and ours. Further, because U.S. companies are shut out of these high-growth markets, the long-term effect in terms of lost future sales is probably much higher.

Mr. President, it is time to end this unilateral disarmament and to fight the battle for the world's markets on the same terms as our economic competitors. The Aid for Trade Act would move the U.S. aggressively into tied aid credits. The Export-Import Bank's war chest, a tied aid credit fund started by Congress in 1986, would be provided with $400 million over 2 years. For fiscal year 1992, the Congress appropriated $150 million. Congress has been

very supportive of the war chest, but the Bank has not used the funds appropriated to it because of the administration's position that tied aid credits are unfair. In fiscal year 1989, for example, the Bank's war chest was appropriated $110 million, yet none of the funds were used. In fiscal year 1990, another $110 million was appropriated, but only $14 million was used. Under the Aid for Trade Act, the Bank would be required to report the reasons for not using any of the war chest funds, and to detail any bids lost by U.S. companies as a result of their failure to use war chest funds.

Mr. President, moving United States businesses aggressively into Eastern Europe to help the newly emerging democracies rebuild must also be a top priority for us, which is dealt with in the third part of the Aid for Trade Act. It is time to catch up to the swift, decisive movements of the Western Europeans and to move into Eastern Europe with innovative proposals. Our bill would create a $1 billion Eastern Europe Loan Guarantee Program within the Export-Import Bank and the Overseas Private Investment Corporation in order to protect United States businesses against political risks and economic defaults. Without such protection, many of our firms will hesitate to move aggressively into an area in transition.

We provide a $100 million program with AID to help Eastern European countries make the transition to free markets with thriving private sectors. Much of the aid allocated over the last 2 years by the United States and other countries is not being effectively used because of a lack of technical assistance and expertise.

We would also authorize an additional $20 million for the direct loan program administered by the Overseas Private Investment Corporation to support United States small business activities in Eastern Europe.

We live in an increasingly global economy with increasingly equal economic competitors. We no longer enjoy the commercial advantages that we did in the 1950's. Now, when American companies lose market shares around the world, jobs are lost at home. Greater market share means greater exports and more jobs for Americans. Without delay, we must reorient our foreign aid approach. Only by giving the American taxpayer a return on our foreign aid investment can we build a broad-based constituency for foreign aid. Only by understanding the marriage of our economic and foreign policy goals can we realize them in the decade ahead. We have no time to waste.

I ask unanimous consent that the bill as well as a section-by-section analysis of our legislation be printed in the RECORD after the statements of my distinguished colleagues who are cosponsoring the legislation.

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

S. 571

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 "Aid for Trade Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the development of an active private sector in developing countries and establishment of long-term commercial relationships with U.S. firms should be a central goal of the United States foreign assistance program;

(2) official export finance is critical to the international competitiveness of many leading American industries and firms, particularly in the high-technology sectors;

(3) developing countries are in critical need of assistance for the establishment and improvement of their economic infrastructures;

(4) the United States faces increasing foreign competition in the high-technology sectors in key markets around the world;

(5) exports of capital equipment and related services increase United States trade opportunities overseas, create new United States jobs, and contribute to a reduction in the trade deficit;

(6) other governments, which incorporate national commercial considerations into their export policies, provide their firms with a wide variety of export financing assistance, including direct loans and mixed credit financing;

(7) the United States provides far less in capital project assistance than do the other major OECD countries;

(8) United States Government policy to date has not responded adequately to foreign government tied-aid programs, and has been insufficient to meet the objective of reducing concessional export financing assistance;

(9) it is essential to undertake measures that remove barriers to United States commerce and aggressively promote United States exports; and

(10) any such measure should not be undertaken at the expense of assistance to the poorest countries.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "bilateral economic assistance" means assistance of any kind furnished under—

(A) part I of the Foreign Assistance Act of 1961; and

(B) chapter 4 of part II of that Act (relating to the economic support fund);

(2) the term "capital projects" means projects for economic infrastructure in sectors such as construction, environmental protection, mining, power and energy, telecommunications, transportation, or water management; and

(3) the term "developmentally sound" means those projects that meet minimum criteria set by the coordinating committee established in section 102(b), including criteria based on economic return, poverty reduction, and environmental sustainability.

TITLE I—USE OF FOREIGN ASSISTANCE FUNDS

SEC. 101. ALLOCATION OF ASSISTANCE FOR CAPITAL PROJECTS.

(a) ALLOCATION OF FUNDS.—For each of the following fiscal years, the corresponding percentage of bilateral economic assistance shall be available only for the construction, design, or servicing of developmentally sound capital projects:

(1) For fiscal year 1993, 10 to 15 percent.

(2) For fiscal year 1994, 15 to 20 percent.

(3) For fiscal year 1995, 20 to 25 percent.

(4) For fiscal year 1996, 25 to 30 percent.

(5) For fiscal year 1997, 30 to 35 percent.

(6) For fiscal years thereafter, at least 35 percent.

(b) USE OF FUNDS.—Pursuant to section 604(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2354(a)), funds allocated under subsection (a) may be used only for procurement of United States goods and services.

SEC. 102. INTERAGENCY CAPITAL PROJECTS COORDINATING COMMITTEE.

(a) MIXED CREDIT FACILITY.—(1) There is established a program for the combined use of credits, loans, and guarantees by the Export-Import Bank of the United States and the private sector and grants made by the Agency for International Development under part I of the Foreign Assistance Act of 1961 and by the Secretary of State under chapter 4 of part II of such Act to support the construction, design, or servicing of developmentally sound capital projects.

(2) Grants shall constitute not more than 35 percent of the support for any capital project assisted under paragraph (1).

(3) Of the funds allocated for capital projects by section 101(a) in any fiscal year, $350,000,000 shall be available only for grants under this subsection for such fiscal year.

(b) ESTABLISHMENT OF INTERAGENCY COMMITTEE.—(1) The President shall establish an interagency capital projects coordinating committee composed of representatives of the Department of State, the Department of Commerce, the Export-Import Bank of the United States, the Trade and Development Program, and the Agency for International Development.

(2) The President shall designate a representative of the Agency for International Development to serve as chairman of the interagency committee established under this subsection.

(c) PURPOSE.—The purpose of the interagency committee established under subsection (b) shall be to ensure a strategic approach to the support of capital projects through the use of the resources described in subsection (a).

(d) REPORT.—Beginning 12 months after the date of enactment of this Act, and every 12 months thereafter, the interagency committee established under subsection (b) shall submit to the Congress a report describing—

(1) the extent to which United States Government resources have been expended specifically to support capital projects;

(2) the extent to which the activities of the United States agencies described in subsection (b) have been coordinated; and

(3) the extent to which United States Government capital projects and tied aid programs have affected United States exports.

SEC. 103. LIMITATION ON CASH TRANSFERS.

(a) LIMITATION.—For each of the following fiscal years, cash transfers shall not represent more than the corresponding percentage of Economic Support Funds:

(1) For fiscal year 1993, 50 percent.

(2) For fiscal year 1994, 40 percent.

(3) For fiscal year 1995, 30 percent.

(4) For fiscal year 1996, 20 percent.

(5) For fiscal year 1997, 10 percent.

(b) STUDY.—The Comptroller General of the United States shall conduct a study of cash payment assistance. Such study shall include an analysis of the purposes of cash payment assistance, accountability for and

monitoring of how such assistance is used by recipients, the feasibility of separate accounting procedures for countries that use cash payments for the purchase of United States goods and services or the repayment of debt owed to the United States Government, and the degree to which recipients of cash payment assistance are required to and in fact use such assistance to purchase United States goods and services.

(c) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report setting forth the findings of the study conducted under subsection (a).

(d) DEFINITIONS.—For purposes of this section—

(1) the term "cash transfers" means Economic Support Fund assistance provided as cash payments which are not used for the purchase of United States goods and services or the repayment of debt owed to the United States Treasury;

(2) the term "cash payment assistance" means foreign assistance made through cash payments; and

(3) the term "Economic Support Funds" means assistance under chapter 4 of part II of the Foreign Assistance Act of 1961.

SEC. 104. RESTRICTIONS ON WAIVERS.

Section 604 of the Foreign Assistance Act of 1961 (22 U.S.C. 2354) is amended by adding at the end thereof the following new subsection:

"(h)(1) In determining the authorized geographic code for the purchase of goods and services, the Administrator of the agency primarily responsible for carrying out part I of this Act shall not grant any waivers from Geographic Codes 000 (United States only) or 941 (United States and least developed countries) except for the following reasons:

"(A) The good or service is not available from countries or areas included in the authorized geographic code.

"(B) An emergency requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

"(C) For project assistance only, when Geographic Code 000 is authorized and the lowest available delivered price from the United States is reasonably estimated to be 50 percent or more higher than the delivered price from a country or area included in Geographic Area 941, a waiver to Geographic Area 941 may be granted.

"(D) For nonproject assistance, an acute shortage exists in the United States for a commodity generally available elsewhere.

"(2) The Administrator of the Agency for International Development shall report annually to Congress on the number of waivers described in paragraph (1) which were granted in the previous fiscal year, the corresponding value of goods and services which were covered under such waivers, a breakdown of the waivers by region and country, and an explanation of the reasons given for such waivers.".

TITLE II—INCREASE IN CREDIT AUTHORITY

SEC. 201. EXPORT-IMPORT BANK LOAN GUARANTEES.

There are authorized to be appropriated for each of the fiscal years 1993 through 1997 an amount which equals the aggregate amount available during the preceding fiscal year for direct loans and as reserve funds for loan guarantees made by the Export-Import Bank of the United States, plus 15 percent of that amount.

SEC. 202. EXPORT-IMPORT BANK "WAR CHEST" AUTHORIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 15(e)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635i-3(e)(1)) is amended by inserting before the period at the end of the first sentence the following: ", and $200,000,000 for each of the fiscal years 1993 and 1994".

(b) Beginning with fiscal year 1993, and for each fiscal year thereafter, if the amounts authorized to be appropriated by section 15(e)(1) of the Export-Import Bank Act of 1945 for such fiscal year are not totally used, then, at the close of such fiscal year the Chairman of the Export-Import Bank of the United States shall submit to the Congress a report stating—

(1) the reasons behind the Bank's decision not to use these funds; and

(2) the amount of sales or bids lost because of the Bank's decision not to use these funds.

SEC. 203. TRADE AND DEVELOPMENT PROGRAM AUTHORIZATION.

Section 645(d) of the Trade and Development Enhancement Act of 1983 (12 U.S.C. 635r(d)) is amended by adding at the end thereof the following: "In addition, there are authorized to be appropriated $50,000,000 for each of the fiscal years 1993 and 1994 to support preliminary engineering and design work for capital projects.".

TITLE III—EASTERN EUROPE RECOVERY PROGRAM

SEC. 301. EASTERN EUROPE TECHNICAL ASSISTANCE PROGRAM.

(a) AUTHORIZATION.—The President, acting through the Administrator of the Agency for International Development, is authorized to provide technical assistance to assist in the revision of public policy and administrative reforms to effect the orderly evolution of free-market economies among the Eastern European nations.

(b) DESCRIPTION OF ELIGIBLE ACTIVITIES.—Assistance under subsection (a) shall be available for such activities as technical support for the revision of product standards, streamlining business formation procedures, establishing a positive business climate, removing obstacles to the timely and efficient utilization of the capital resources the United States is making available, and such other support services that may be required to establish free-market economies.

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the President $100,000,000 for the fiscal year 1993 to carry out this section.

(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 302. EASTERN EUROPE LOAN GUARANTEE PROGRAM.

(a) ESTABLISHMENT OF LOAN GUARANTEE PROGRAM.—(1) There is hereby established within the Export-Import Bank of the United States an Eastern European Loan Guarantee Program with an authorized loan guarantee level of $750,000,000. Guarantees under this section shall be provided to United States lenders and exporters for projects which provide for the export of United States-made products and services to Eastern Europe.

(2) Notwithstanding any other provision of law, the total amount of loans for which guarantees may be made by the Overseas Private Investment Corporation under the Foreign Assistance Act of 1961 may not exceed $250,000,000.

(b) COMPLIANCE WITH THE BUDGET ACT.—The authority to enter into guarantees under subsection (a) shall be effective to the extent approved in appropriations Acts.

(c) DEFINITION.—For the purposes of this section, the term "projects" means economic infrastructure projects or other projects which the Export-Import Bank or the Overseas Private Investment Corporation determines will increase the economic growth of the importing country.

SEC. 303. OVERSEAS PRIVATE INVESTMENT CORPORATION AUTHORIZATION.

Section 235(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(b)) is amended—

(1) in the fourth sentence by striking out "$25,000,000" and inserting in lieu thereof "$45,000,000"; and

(2) by inserting before the period at the end thereof the following: ", except that at least $20,000,000 of loans under section 234(c) shall be available only to promote the activities of United States small businesses in Eastern Europe".

TITLE IV—GENERAL PROVISIONS

SEC. 401. NEGOTIATIONS OF THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT.

If a new agreement within the Organization for Economic Cooperation and Development (OECD) has not been reached by December 31, 1991, that meets the objective of reducing the levels of concessional financing by member countries of the OECD other than the United States, the Secretary of the Treasury, together with the President of the Export-Import Bank of the United States, shall submit a report to Congress on the status of the negotiations, including an analysis of the negotiations since 1987, the causes for the failure to reach an agreement by that date, and reasons the United States Government believes that continued negotiations will result in achieving the above mentioned objective.

SUMMARY OF THE BOREN-BENTSEN-BYRD-BAUCUS AID FOR TRADE ACT OF 1991

I. FOREIGN AID

Capital projects

Capital projects—such as transportation, power, and telecommunication systems—comprise a fraction of U.S. foreign assistance, but represent large portions of the foreign aid given by countries like Japan, France, and Italy. These economic infrastructure projects not only help the recipient country, but also help the doner since the design, construction, and servicing of the projects are done by national exporting companies. The Aid for Trade Act mandates that a minimum level of all "bilateral economic assistance" be used for developmentally sound capital projects. That level ranges from 10 to 35 percent over a five year period.

Following a recommendation by the Bush Administration, the bill also creates a new "mixed credit" facility for the financing of capital projects. Mixed credits are aid in the form of both grants and loans. The $1 billion facility would be administered by A.I.D., which would provide $350 million in grants. The remaining $650 million in loans would come from the Export-Import Bank (ExIm) and the private sector. A.I.D. and the Export-Import Bank would coordinate with the Commerce Department, the State Department, and the Trade and Development Program to develop a strategy for capital project aid that helps other countries while also improving U.S. exports.

Cash transfers

Last year, 60 percent of U.S. economic assistance under the Economic Support Fund (ESF) went out in this form. The bill mandates that cash transfers be no more than 50 percent of all ESF funds in FY 1993. This fig-

ure is decreased to 10 percent over five years. Only those cash transfers which are not tied to either the purchase of U.S. goods and services or repayment of debt owed to the U.S. Government would be subject to these limits.

Waivers

One of the primary reasons for the low percentage of development aid that comes back to the U.S. is the frequency of waivers granted by A.I.D. from the requirement that all products purchased with U.S. foreign aid must be bought in this country. Until last year, A.I.D. did not even have an accounting procedure that tracks the total level of waivers. Whether A.I.D. has a consistent waiver policy is still unclear. The bill limits the use of certain waivers by A.I.D. that allow non-U.S. procurement.

II. EXPORT ASSISTANCE

Export-Import Bank

The main government agency which assists U.S. companies in exporting their products around the world is the U.S. Export-Import Bank. The amount the Export-Import Bank (ExIm) can provide in loan guarantees and export insurance is capped every year by Congress. The bill authorizes a 15 percent increase every year in the level of ExIm activity for each of the next five years. This steady growth will ensure U.S. companies have the insurance and guarantees they need to capture new markets for U.S. products.

War Chest

In 1983 Congress began to fight unfair "tied aid" activities by other countries by creating the Tied Aid Credit Fund (the "War Chest") within the Export-Import Bank. However, despite Congressional authorization, appropriation, and widespread approval, War Chest funds have not been used. In 1988, for example, Congress appropriated $110 million to the War Chest to fight tied aid practices, but the Administration did not use a single dollar. For fiscal year 1991, $150 million was allocated by Congress. The bill would increase this level to $400 million for fiscal years 1993 and 1994.

In addition to increasing the War Chest's authorization, the bill would attempt to insure that War Chest funds are actually used. ExIm would be required to report annually to Congress on the reasons behind their decision not to use any of the War Chest funds appropriated to them, and to detail any bids lost by U.S. companies as a result of their failure to use War Chest funds.

Trade and development

The Trade and Development Program (TDP) was established in 1974 and substantially expanded and revamped in 1988. Its primary mission is to provide early planning and feasibility studies to U.S. companies for development projects, for which it was appropriated $30 million in FY 1990. However, to combat a similar practice by many countries, the bill would expand TDP's role by authorizing $100 million for fiscal year 1993 and 1994 for engineering and design work for capital projects—the first time TDP will be used to combat this type of unfair trade practice.

III. AID TO EASTERN EUROPE

The bill authorizes a $100 million technical assistance program, within A.I.D. to help the transition in eastern European countries to free market economies. Much of the aid provided to countries such as Poland and Hungary over the last two years is not being effectively utilized today due to a lack of business and economic expertise in these countries.

The proposal also authorizes a new $1 billion Eastern Europe Loan Guarantee program through ExIm and the Overseas Private Investment Corporation (OPIC). ExIm will have a $750 million loan level, and OPIC will have $250 million available to assist U.S. companies expand into Eastern Europe. It would also allocate an additional $20 million for OPIC's direct loan program to be used to support U.S. small business activity in Eastern Europe.

[From the Washington Post, Jan. 13, 1991]

JAPAN'S HANDS-ON FOREIGN AID

(By Steve Coll)

ANPARA, INDIA.—At dawn in this remote and smoky industrial town, a steel skeleton rises in the half light, the beginnings of an $850 million, 1,000-megawatt electric power generating station being constructed by Mitsui & Co., the Japanese trading giant. The plant, which will pump power across India's densely populated north, was made possible by a record $600 million, low-interest-rate loan from the Japanese government.

To Japanese officials, the plant is a symbol of Tokyo's new place as the leading philanthropist in the Third World, a position it assumed at Washington's urging. But to some resentful Western aid officials, the symbolism is very different.

While the United States slashes its foreign aid budget and rethinks its international assistance, they say, Japan is using its bountiful aid coffers to develop Third World markets for the 21st century—in many cases using development aid explicitly to promote Japanese companies against Western competitors.

As it did with the power plant under construction here, Japan often links large loans and grants to poor countries with procurement of Japanese equipment and technology, an approach that not only enriches Japanese firms in the short run, but also provides them with a strong marketing edge once an aid program is finished.

Japan's seemingly clear-eyed emphasis on its economic self-interest contrasts with a U.S. aid program that appears to be in a state of confusion, shrinking in size and uncertain of its purpose.

Nowhere is this more obvious than in South Asia, a poor but steadily developing region with more than 1 billion people and a growing penchant for market capitalism. In the region's three largest markets—India, Pakistan and Sri Lanka—Japanese bilateral assistance now far outstrips that of the United States, amounting to more than $2 billion annually.

The vast majority of Japan's aid comes as low interest rate, or "soft," loans for big infrastructure projects such as power stations, telecommunications systems, and energy and transport, and the Japanese loans have strings attached: U.S. and European companies are largely excluded from participation in the projects, permitting Japanese firms to make immediate profits, establish their technologies in nascent industries and develop future markets.

As one Western aid official noted: "Once a user becomes familiar with Japanese equipment and technology, they'll keep using it."

It is a self-interested aid philosophy that "is skewed in a manner to promote Japanese interests to the great detriment of the development needs of the recipient country," said another Western aid official.

In the U.S. approach, on the other hand, this official argues, "There is a dimension that goes beyond self-interest . . . that is altruistic. This is an important part of American values."

In private, Japanese businessmen and officials scoff at American attempts to hold the moral high ground on aid.

They point out that "altruistic" programs, such as U.S. food donations to India, are protected in Washington by corporate farm and shipping lobbyists, whose clients reap millions of dollars annually from the program. They note that among developed Western countries, the United States is virtually alone in not linking economic aid to the explicit interests of its own companies. And they argue that the thrust of Japan's aid program promotes the goals articulated by the Reagan and Bush administrations; to encourage recipient countries to solve their problems of poverty and development through capitalism.

U.S. aid officials acknowledge that their own house is in a state of relative disorder. "Probably over the years we've had [on] a bit too many rose-colored glasses," said a Bush administration official. "We have to see that it's a different world and we have to adjust. . . . I think we should be prepared to meet the competition in whatever form it takes."

MEET FUKUO YAMANAKA

Here is the competition: a round, bespectacled, unusually friendly Japanese executive named Fukuo Yamanaka, chief representative in India of Mitsui & Co., the Japanese trading giant. Yamanaka knows the United States—he worked there for nine years—and he remembers his time fondly. But his career provides a microcosm of how the nexus between government aid and private trade has changed in Japan and the United States during the past three decades, and how those changes are reshaping international economic competition.

Yamanaka's business is power—the manufacture, sale and maintenance of electric power generating stations and their assorted industrial components. He first came to the United States in the early 1960s, when "made in Japan" was synonymous with "cheap and shoddy" and when the international electric power business was dominated by U.S. firms, particularly General Electric Co.

As an engineer and salesman, Yamanaka's job in those days was to acquire and sell GE power turbines to Japanese users, often municipal governments and other utility authorities. No company in Japan could make turbines as well as GE, so Mitsui in those days made its money brokering American exports to Japan.

Because of the huge sums involved in building a power plant, and because governments are almost always involved in the business, it is typical for large deals to be supported by government credits or low-interest loans. Back in the 1960s, Yamanaka's job was made easier by the favorable financing he arranged with the U.S. Export-Import Bank. In those days, Japan was a big recipient of U.S. economic aid designed to rebuild its war-shattered infrastructure * * *.

Today, Yamanaka is posted on Mitsui's next frontier: the developing world, where demand for electric power far outstrips supply, and where governments are anxious to build plants quickly on favorable terms. GE is still one of Mitsui's competitors, but in India and elsewhere in South Asia, the contest isn't very close.

One big reason: Japanese government aid, in the form of "soft" loans from its bulging Overseas Economic Cooperation Fund (OECF), has made Mitsui pretty much unbeatable by U.S. companies in South Asia.

Mitsui's biggest project in India today is the construction of the two 500-megawatt electric generating facilities at Anpara. Mitsui won the lead position on the contract after outbidding a single Japanese competitor.

The deal was clinched by a $600 million OECF loan carrying a 2.5 percent annual rate of interest, a 10-year grace period and a repayment period stretched over 30 years.

Like many Japanese, Yamanaka is sensitive to any implication that Japan is cynically using its aid budget to a poor country like India to promote the prosperity of Japanese corporations. The OECF loan restrictions excluding Western companies from competing "is of course a mixture, the political decision, the business decision."

As for Mitsui's goals, they are twofold, he said: to make immediate profits by winning contracts, and to build for the long run by using government-financed deals to introduce technologies and find partnerships with Indian companies.

Virtually all OECF loans to this region bar U.S. and European companies from competition, as was the case with the Anpara loan, but companies from developing countries are permitted to compete. In the rare instances where they beat out a Japanese competitor, negotiations later still often result in a tie-up with a Japanese company.

There are dozens of deals pending or underway in South Asia where Japanese firms have won contracts to build infrastructure projects using restrictive OECF loans or outright grants from Tokyo. Grants require 100 percent procurement from Japan.

* * * * *

In India, where the government tends toward xenophobia even in the best of circumstances, there is a voluble debate about whether the Japanese aid system is as good for India as it is for Japan. Some accuse Japanese firms of taking advantage of their quasi-monopoly status in big projects to charge exorbitant prices. Others worry that Japan doesn't do enough to involve Indian companies in development work.

"One thing is very clear: The bulk of the OECF money ultimately goes back to Japanese companies," said Naresh Minocha, an Indian financial analyst. "And the Japanese companies quote higher prices than they would in full global competition."

RETHINKING THE PURPOSES OF AID

It now is clear that Japan's aid program in South Asia and much of the developing world dwarfs that of the United States and helps Japanese companies secure a toehold in markets where they might otherwise be left behind. But these truths do not necessarily mean that the United States will be less competitive than Japan in Third World markets during the 21st century, some economists and business officials say.

That is one reason specialists in Washington are today unsure about what the purpose and character of U.S. aid to poor countries should be.

U.S. aid policy remains driven by diverse impulses: to shore up friendly governments in strategic regions, to promote the spread of democracy and capitalism generally, and to provide direct relief to those living in the depths of Third World poverty.

The promotion of economic competitiveness has joined that list of goals during the Reagan and Bush years, but some U.S. aid workers say the idea has been slow to take root in an aid bureaucracy populated by people who see their careers as being devoted to altruism, not economic nationalism.

Some economists and government officials say the United States should try to best Japan not by imitating its approach to foreign aid, but rather by exploiting U.S. "comparative advantages" against Japan.

The biggest of these advantages, they say, is a relatively open U.S. immigration policy that encourages the development of international family-run businesses with a strong anchor in the United States.

For example, there are now about 26,000 Indians attending U.S. colleges and universities, according to U.S. officials. Presumably, some of them will start trading and making money on their own when they are finished with school, as thousands of Indians before them have done, building up two-way trade that totals billions of dollars annually.

Still, some U.S. officials argue that Washington should do much more to integrate the specific needs of U.S. businesses into its foreign aid budget, particularly in areas of the world where markets are young and Japanese and Europeans are working aggressively.

"If the Japanese companies have been so successful [in South Asia], it is because of the close linkage between industry, banking and the government," said V. Krishnamurthy, former chairman of the Steel Authority of India and a key architect of Japan's aid and trade relationship with India. "If you had gone to the American embassy in [New] Delhi, or to the government in Washington with a proposed deal, they would not" have provided much guidance or assistance.

The U.S. government is trying to change that, but the pace is slow. U.S. embassies now have instructions to integrate more closely the work of Commerce Department officials and representatives of the Agency for International Development (AID), which administers most U.S. aid to poor countries.

Last year, AID established for the first time a $300 million "war chest" to help U.S. companies arrange competitive soft loan financing against Japanese and European firms. But the amount available for such loans is relatively paltry. And during the same period, Congress defeated, at AID's urging, a bill that would have directly linked U.S. aid donations to procurement from U.S. companies.

"The goals remain the same—to improve the quality of life for poor people in developing countries," said a U.S. aid official. "We're also interested in developing an environment conducive to U.S. investment abroad . . . but we're not the instrument for U.S. business."

Krishnamurthy, recalling the days of the Kennedy and Johnson administrations when India was plagued by famines and the U.S. government boldly led a rush of charitable donors onto the subcontinent, said the U.S. aid philosophy has been well-intended but ultimately unprofitable. "Looking back, U.S. aid was directed in the right places" to alleviate poverty, he said. "But it was not aid that had a commercial future."

[From International Review, Fall 1990]

EXAMINING AMERICAN ASSISTANCE TO EASTERN EUROPE

(By Robert C. Byrd)

The convergence of several dramatic trends and events have focused new attention in the United States Congress toward American strategic, political and economic policies in Central and Eastern Europe. The crisis Iraqi aggression created in the Middle East is serving to hasten the final curtain call on the strategic priority of Central Europe, most particularly on the continued heavy commitment of America's military resources. The apparent disintegration of Soviet central authority, along with a welcome shift in its international relations, is causing the conventional wisdom to compose epitaphs to Soviet superpower status. This has disoriented and confused any single strategic "analysis" of Europe or the world at large. Like a landscape artist putting rich oil to a pencil outline, the Persian Gulf crisis has thrown this changed European scene into stark relief, and the worsening American economic climate, with its structural budget and trade deficits, is reinforcing the reality that American, foreign aid programs are unpopular at home, ineffective abroad and irrelevant to foreign and domestic economic solutions.

Undoubtedly, the character of America's priorities on the European continent is rapidly changing. The overwhelming impetus for a refashioning of U.S. international economic policies in the Congress is a dire need to improve America's economic competitiveness, trade balances and budget problems. Indeed, increased resources are sorely needed in the devastated wasteland that has been imposed on Eastern Europe, and the Congress has already demonstrated a greater willingness to dedicate fresh and large resources to those countries. Yet certain well understood ground rules differentiate this nascent effort from the efforts we made in the post-World War II devastation of Western Europe. First, aid is flowing and will flow to those countries that Congress believes are decisively rejecting command economics and authoritarian politics for free markets and democratic politics, including demonstrably fair electioneering girded by some arguably free press. Second, while Congress is now picking early winners—including Poland, Hungary, East Germany and Czechoslovakia (in roughly that order)—based on these standards, it also needs to fundamentally revise the kind of aid to be dispensed.

The two main areas that require urgent work are the country-by-country distribution of aid and the fundamental nature of the aid being given. The first problem is that we still exempt some countries from scrutiny. The problem is that the "entitlement" we are providing to the Camp David countries, Israel and Egypt, consumes about 20 percent of the entire foreign aid budget. For the moment, and with the Middle East crisis on our hands, it may be necessary to continue along that line. But like it or not, the Camp David countries should not be exempt from examination, and we cannot continue to tie the funding for one country to that of another in an increasingly irrelevant and mechanistic fashion. It is high time that we evaluate the size of the budget coldly and frankly and determine the allocation of aid in light of the entire range of pressing needs. The House has made an effort to redress the issue by increasing aid to Eastern Europe from $300 million to $489 million on this year's budget. But to do so required a diminution of the amount to be allocated to the so-called "base rights" countries of Greece, Turkey and Portugal. Events in the Persian Gulf since the House action call for a substantial increase for Turkey, given the strong leadership role and heavy burden of economic sacrifice it is bearing to support the embargo on Iraqi oil and trade.

Even more important that a thorough house-cleaning of our bilateral priorities, perhaps, is the need to fundamentally change the philosophy underpinning the ways and conditions by which US aid dollars are trans-

ferred. They should be tied to long-term US strategic and particularly economic interests if these programs are to regain a modicum of popularity and relevance in the American political system. Last spring, the Bush Administration pressed for quick passage of a special $800 million aid package for the new democratically elected governments in Panama and Nicaragua. The urgency of the request was not persuasive and even cursory examinations of the request revealed little development of essential detail and little justification of the very high levels of aid being requested. Testifying before the Appropriations Committee in defense of the request. Undersecretary of State Lawrence Eagleburger urged flexibility to the Bush Administration in dispensing the money because "the precise details of how much of this money will be devoted to which sectors of the economy will evolve over time." The reality was that the Bush Administration had no defensible rationale for requesting that extravagant sum of money for economies which could not possibly absorb it in the short run. Modest sums for rebuilding those war-torn economies would have been more defensible if the Administration had coupled its aid request with a commitment to participate in the reform of the prostrate economies of Eastern Europe. The 1990 Central American emergency aid package was not really an aid package so much as an awards presentation, a trophy ceremony to nail down credit for perceived foreign policy successes. Much of it, I am afraid, will disappear—undigested. (CFE) talks in Vienna maintains a direct connection to American political reality. Absent the unlikely resurgence of a credible Soviet threat, Congress is not going to continue to support large troop concentrations in Europe simply to give complex negotiations time to sort out the variables or to enable some convoluted new European security arrangements outside NATO to come to life. Congressional action is likely to run ahead of US negotiators in any or all arms control negotiations if the Bush Administration does not infuse renewed urgency into those negotiations. To be frank, the planned cuts now on the table do not go far enough and are in danger of being outrun by reality. It will not work to kick those cans down the road with promises of new "follow-on" negotiations.

I believe there is also a growing consensus in the Congress that the Bush Administration has not been vigorous or sufficiently creative enough in addressing the dual imperatives of a stagnating economy being beaten rather badly in the international arena and evolving world geopolitical fault lines. Bush has not drawn off the steam, now quickly building, to conform aid dispensing mechanisms to America's priorities. This was illustrated in the foreign aid budget proposed for the next year and in the hastily-conceived supplemental appropriations request for "emergency" aid to Panama and Nicaragua that was passed last spring. The result has been—and is very likely to continue to be—major Congressional surgery on the 1991 budget request and the passage of wholly new legislative formulas which will guide a revamping of the aid-giving process.

I have come to believe that the foreign aid program of the United States is crippled by special clients, whose needs have not been examined in relationship to the size of a limited foreign aid "pie" and to the changing needs of the United States itself. Such an analysis is badly overdue and must be ruthlessly made without the overlay of emotionalism, nostalgia or special interest pleading. In short, we need to pursue the interests of the United States, to further our goals in a rapidly changing world and to enhance US economic competitiveness as an integral part of our national security.

The Bush Administration has submitted an anachronistic foreign aid program, a program that was wholly constructed before the sweeping political tide that carried away Soviet control of Eastern Europe, rendering the Warsaw Pact and CMEA obsolete. Since that submission, no budget amendment or revision has been offered to help guide the work of Congress. The report of the House of Representatives on that aid package rightly characterized the Bush Administration's budget request as a "sleepwalker" budget, unwilling or unable to "move away from habitual and outmoded thinking on the question of what really constitutes national security in the new world." The American taxpayers should not be forced to foot the bill for an outmoded foreign aid program that executive branch bureaucracies have failed to adjust to changing reality.

Aid that benefits the American economy and is tied to U.S. business and commercial interests is the heavy favorite for two reasons: first, it is now clear that this is the game being played by our key economic competitors, who were among the recipients of the first round of U.S. international economic largess in the post-war period: second, others, myself included, are convinced that this kind of aid will be of greatest utility to these countries. Such aid, we hope, will develop a robust American business and commercial presence in those nations over the decade necessary to get them reasonably on their feet. A shorthand for American shifting priorities, it is perhaps stands the obvious to remark that a competitive American economic presence and relationship with the nations of Eastern Europe meant to replace the less productive investment with which we have been burdened for four decades—the stationing of hundreds of thousands of soldiers in Western Europe.

Americans will no longer be persuaded that the U.S. should maintain large numbers of forces in Western Europe to service a trip wire for Soviet aggression. This trip wire can comfortably be reduced to a single Army corps, as serious students of U.S. European commitment such as Dr. James Schlesinger and Senator Sam Nunn have already concluded. Thus, any thought that American forces should exceed 100,000 personnel for any longer than two more years would be seriously off the map. Second, even less acceptable to Americans will be the notion that the United States Army should serve indefinitely as European policeman. America cannot serve as a psychological brace for those neighbors of Germany that fear history will repeat itself. Nor can it act as a stabilizer for the growing economic unrest in much of the formerly frozen, now awakening, are peoples who so recently were considered to be part of the Soviet empire.

Given the state of the American economy, the need is to shrink the dangerous budget deficit, to pour large levels of new investment into the United States decade infrastructure and neglected educational and training programs to renew investment in aging plant and capital complacement. Furthermore, the molding of the Middle East along new political and strategic fault lines is accelerating the need to keep U.S. military resources in Europe. Conventional wisdom and the U.S. has been dedicating between one-third and one-half its annual $300 billion defense budget to the European theater. I and others are convinced that this figure should be reduced a fraction of this amount as quickly as possible. On the other hand, NATO resources need redirection to bear on our ability to influence the evolving situation in Southwest Asia. They greatly favor dedicating additional attention and resources Turkey, as a key example, and to NATO's southern flank.

If a successful program is to be implemented in Eastern Europe, as I believe it should be, then US taxpayers should be convinced that they are going to get a fair and deserved return on their investment. As never before, national security and international influence today are being gauged in terms of economic leverage and economic prowess. A brief comparison between the ways in which the United States and its key competitors manage foreign aid highlights the fundamental problem. Tied aid and tied aid receipts are a primary mechanism that West Germany, France and Japan use as a wedge for economic influence around the world. For example, from 1984 to 1987, those three countries spent 70 percent of the aid on capital-intensive projects to create large markets for capital goods exports from the home country. During the same years, the United States dedicated a mere seven percent of its assistance to such projects. Tied aid locks in markets for our economic competitors. While their foreign aid does give valuable assistance, it is also a motor to expand influence and penetrate and create new markets. Between the years 1984 and 1987, over 90 percent of US aid was in the form of direct cash grants—no strings attached, no influence affected and no lasting economic relationship generated. In 1990, the largest US special aid program to Eastern Europe in recent years was a one-time $800 million cash grant to Poland. At the same time, West Germany and Japan provided Poland with over $3 billion, but over 80 percent of it was in credits tied to their own industries in the beneficiary countries.

It is clear that Eastern Europe is desperately in need of capital, and it makes economic, political and strategic sense for the United States to provide aid that is tied to the long-term provision of American capital. It is also clear that the growing concern of the US business community about inadequate government support for its trade and investment activities in Eastern Europe, compared with the extraordinary efforts in Western European countries and Japan on behalf of their business sectors, is well justified. Data on aid to all countries in Eastern Europe show that US assistance, excluding debt rescheduling, is less than one-fourteenth of the total. In the all-important area of export and investment credits, U.S. aid to efforts by US businesses to establish markets and presence is one-sixth that of West Germany, one-third that of the European Economic Community, one-third that of Japan, and less than that of France or Italy. Japan has already signed two loans from its Export-Import Bank ("Eximbank") for over $1 billion to Poland and Hungary. Contrast that to the US Eximbank which has only $612 million in its Direct Loan Program for the entire world, and no funds specifically available for US business activities in Eastern Europe.

The consequences of inadequate Eximbank support for US commercial activities in Eastern Europe are a loss of short-term economic advantage as well as a long-term loss of penetration into what will be the hottest export and investment market for the remainder of the century. The need for US gov-

ernment help in the race for Eastern European markets is urgent. American technology, however, can do it all at once; it can boost America's international competitiveness and balance of trade at the same time that it helps where it is most needed—in Eastern Europe. Eastern Europe's environment, for instance, is a total disaster. An official Senate group visiting Leipzig reported that the city's once stately buildings are collapsing from the acidic action of layers of ugly grime that cover everything. It is not only the buildings that are coated with grime, but also the lungs of the people. Parts of Poland are uninhabitable; other parts can no longer grow food. The ecological devastation throughout Eastern Europe goes far beyond even the most pessimistic projections of two years ago. We have the kind of environmental and energy technologies that can help.

Senators David Boren and Lloyd Bentsen, as Chairmen of the Intelligence and Finance Committees of the Senate respectively, have recently joined me in introducing legislation to restructure our foreign aid to promote exports of US goods and services, to provide for an ascending floor for such tied aid and to effect a steady reduction in the practice of one-way deliveries of cash. In addition, I have amended the Central American supplemental measure to the Secretary of Commerce to make a comprehensive survey and study of the practices used by the United States' economic competitors to tie their aid. Those who are knowledgeable about our aid program will find it instructive that I chose the Commerce Department to conduct this study, given its knowledge of US international business practices through its Foreign Commercial Service, and not the Agency for International Development, which has been committed to the cash-transfer and mechanism for decades. Our aid programs have focused on balance of payments support and direct basic needs to the poorest peoples. The adverse impact of these practices on the US trade position has been substantial, estimated in a recent report by the Center for Strategic and International Studies to be between $2.4 billion and $4.8 billion in annual losses to American exports. It is a testament to the state of our sophistication in these practices that we found it necessary to conduct a fresh analysis of the substantial differences between ourselves and our competitors in this field. I believe the results of the analysis will help us to start restructuring our programs, employing the important but neglected tool of tied aid in American foreign policy.

America has always been a generous, responsive nation and has used its foreign aid programs to rebuild war-ravaged countries across the globe for half a century. In a new world where there are many other economically wealthy donors who practice aid-giving as another form of wealth creation, it would be running against a long tradition in the United States simply to ape mercantilistic practices. But we have also learned that lasting progress results from the long process of capital creation, and if we are hopeful of implanting democratic, free market systems in the desperate economies and societies of Eastern Europe, then fundamental restructuring of our priorities and our mechanisms is overdue. The success of such a reform would breathe new political support for foreign aid and help our own economy. It will be a win-win game for donor and recipient alike, and will probably cause an increase in the popularity of our foreign assistance programs.

Mr. BAUCUS. Mr. President, over the last 7 years, the United States has been faced with mammoth trade deficits. The United States has struggled to reduce those deficits by finding new markets for U.S. products. Unfortunately, we have often faced serious problems in establishing foreign markets for U.S. products.

We have strived to open markets. The Congress passed the Trade Act in 1988. The act sought to open markets by strengthening section 301 and creating a new Super 301 provision. The legislation also authorized the administration to negotiate market opening agreements in the Uruguay Round of GATT negotiations and bilaterally with other trading partners, such as Mexico.

I am confident that all those efforts will eventually result in new U.S. exports. But there is one important market-opening issue not addressed in the 1988 Trade Act—tied aid. The United States provides $7.7 billion in foreign aid to foreign countries with few strings attached. Unfortunately, that aid is almost never used to support U.S. exports. But many of our trading partners, such as Japan, Germany, and Britain, play by a different set of rules. They tie their foreign aid by requiring that their foreign assistance be used only to purchase their products and services. These tied aid restrictions shut U.S. exporters out of a $10 to $12 billion annual market and add $2.4 to $4.8 billion to the U.S. trade deficit.

Our competitors will not lift their tied aid restrictions. We have no choice but to meet the competition head on. The Aid for Trade Act of 1991 about to be introduced by Senators BOREN, BENTSEN, BYRD, and myself attempts to do just that. The legislation increases the percentage of U.S. foreign assistance that must be spent on U.S. products and services. It also sets commercial objectives for United States foreign assistance, expands the Export-Import Banks operations to support United States exports in developing countries, and established a program to expand United States commercial ties with Eastern Europe.

Mr. President, this legislation seeks to ensure that U.S. foreign assistance promotes the interests of U.S. exporters as well as those of foreign countries. It is an important component of a comprehensive strategy to expand U.S. exports.

By Mr. WIRTH:

S. 572. A bill to amend the Federal Home Loan Bank Act, the Home Owners' Loan Act, and other acts to restructure the Resolution Trust Corporation and dissolve the Oversight Board, to merge the Office of Thrift Supervision into an independent Office of the Comptroller of the Currency, and to dissolve the Federal Housing Finance Board; to the Committee on Banking, Housing, and Urban Affairs.

SAVINGS AND LOAN SIMPLIFICATION ACT

Mr. WIRTH. Mr. President, the administration intends to introduce banking reform legislation in the near future. The legislation, as outlined by Secretary Brady last week has several redeeming features. There are also some provisions that need to be clarified and others that I cannot support. However, what I find most distrubing is the lack of any meaningful savings and loan reform in the administration's package.

The S&L problem will not go away just by wishing it so. When the President took office in January 1989, the S&L rescue was a top domestic priority. When Secretary Brady presented the rescue plan, he requested $50 billion for the RTC and said that there was a $10 billion cushion in that request for unanticipated losses. Thus, the RTC was only expected to cost $40 billion.

Now, Mr. President, the GAO, the RTC and the Oversight Board all expect the RTC to eventually cost more than $130 billion—and that's just the present value cost excluding the hundreds of billions in interest payments that will be required.

It is clear that we are in the middle of the second savings and loan crisis, and this crisis is going to cost an additional $90 billion or more. This is more than double the cost of the first savings and loan crisis. The second savings and loan crisis is a crisis in the administration's management of the savings and loan bailout.

Given the magnitude of this problem, I do not believe it is appropriate to say that we solved the savings and loan crisis last Congress so lets just forget about it. Thus, today I am reintroducing the Savings and Loan Simplification Act [SALSA] which is designed to streamline the structure of the Federal Government's efforts to address the troubles in the thrift industry.

Several elements of the legislation that I offered last Congress were enacted into law and are therefore not included in the new proposal. For example, last year's proposal authorized the FDIC to increase deposit insurance premiums for the bank insurance fund. Senator RIEGLE also introduced legislation to grant this authority and the proposal was included in last fall's budget reconciliation legislation. I also included a proposal to restructure the Federal Government's efforts to pursue financial institution crimes in the initial version of SALSA. This proposal was enacted as part of the crime legislation approved just before we adjourned last year.

Mr. President, the S&L debacle is arguably the greatest 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 expen-

sive undertakings in U.S. history. The projected cost of this effort has been steadily increasing, with some estimates reachings as much as $500 billion, well over $1,000 for each person in the United States.

There is no single culprit responsible for the widespread losses experienced by savings and loans. Instead, the cause of the crisis are complex and varied. Forbearance and inadequate supervision by regulators, major downturns in regional economies, imprudent industry responses to deregulations, and fraud and insider abuse by thrift owners and management all contributed to the problem we now face. The debacle is a colossal mess, Mr. President—and I have found that the more you learn about it the more daunting it looks.

We must examine all the factors that contributed to thrift losses so we can avoid a recurrence of the problems that have plagued the industry and vigorously pursue criminal activity that led to taxpayer losses. Nevertheless, the main task has to be to clean up this problem, and to do so at the lowest possible cost to the American taxpayer.

The administration got off to a good start by proposing the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [FIRREA]. President Bush recognized that we faced a very significant problem and proposed legislation, promptly acted upon and improved by the House and Senate, that offered a good first step at resolving the savings and loan industry's problems. I did not support every element of the President's legislation, disagreeing, for instance, with its off-balance financing scheme and the plan to allow the Chairman of the Federal Home Loan Bank Board to become Director of the Office of Thrift Supervision [OTS] without Senate confirmation. However, on balance, I thought the President's plan was worthy of support.

I have become concerned by the administration's implementation of FIRREA. The S&L crisis deserves to be a high priority. Yet it seems that the administration has not been giving the S&L crisis the urgent attention that it requires. A variety of factors led to this conclusion: The sluggish pace of resolutions of failed institutions, the very slow pace of asset sales, and the reports I have received of the difficulties many individuals and businesses are experiencing in seeking to work with, or purchase properties from, the RTC. These factors raise serious concerns about the level of coordination between the various agencies involved in the S&L rescue operation and the lack of overall guidance from the administration. Too often, it has seemed like no one was in charge or, worse, that several people thought they were.

I also found the administration's protracted delay in filling many of the positions related to the S&L bailout troubling. The President waited more than 6 months after FIRREA's enactment to name the two public members of the RTC Oversight Board, which is charged with developing the policies to guide the RTC in its efforts to close or merge insolvent S&L's and liquidate remaining assets. After a long delay, the administration chose to appoint part-time rather than full-time members to the Federal Housing Finance Board. The Banking Committee has not held hearings on the nominations because of the decision to offer part-time nominees. There was also a long delay in the appointment of the RTC's Regional Advisory Boards. Finally, the administration knew of M. Danny Wall's departure as Director of OTS for nearly 4 months before naming a replacement, 2 days after a judicial decision forced the issue.

All of these elements contributed to my reservations about the progress of the plan to resolve the problems facing the thrift industry and the deposit insurance fund. I am concerned that the administration has simply not given this matter priority and attention commensurate with its cost and importance. I am also concerned that the overall structure of the President's S&L rescue operation is too cumbersome and has contributed to the slow progress thus far. The wide variety of individuals and agencies involved obscures responsibility and makes it difficult to reach swift decisions and act promptly. The legislation I introduce today, the Savings and Loan Simplification Act of 1991, is designed to streamline this structure.

The legislation would accomplish this by reducing the number of agencies involved in S&L-related issues. A number of entities would be abolished and their responsibilities transferred to other already-existing agencies. The RTC Oversight Board, the Federal Housing Finance Board [FHFB], and the OTS would all be abolished under the proposal.

While the RTC Oversight Board would cease to exist, the separate RTC Board of Directors would remain in place and continue to direct the Corporation's operations. This Board would be expanded by adding four full-time independent members to be appointed by the President. One of the four would chair the RTC Board, providing the S&L rescue effort with a full-time "czar" to oversee this massive operation. The members of the Federal Deposit Insurance Corporation [FDIC] Board would continue to serve on the RTC Board. The Board would have seven voting members because the OTS Director would leave the Board and the Comptroller of the Currency would become a nonvoting member of both the RTC and FDIC Boards.

The present structure has been described as providing two heads for the RTC. This arrangement makes it difficult for the RTC to act quickly with one voice and leads to confusion over who is actually in charge of the Corporation. The early months of the RTC saw conflicts between the two boards. The confusion and disarray were among the factors that led to Daniel Kearney's resignation as President of the Oversight Board last year.

We have also seen the Oversight Board decline to act on a number of important RTC policy decisions. For example, the Board decided that its approval was not necessary for the RTC to employ discounts or to use auctions to sell property acquired from insolvent thrifts. If the Oversight Board declines to involve itself in this sort of policy decision, I can't help but wonder why we have an Oversight Board at all.

More recently, the Oversight Board has permitted the RTC to work with the Fish and Wildlife Service to enlist the Service's assistance with the identification of properties with significant natural, cultural, recreational, or scientific value. The discussions between the RTC and Fish and Wildlife produced a memorandum of understanding which apparently had been signed by both parties. Unfortunately, at the last minute the Oversight Board switched gears, decided that the matter was a policy rather than an operational matter after all, and killed the proposal. With a consolidated board, such conflicts between the RTC's policy and operational arms could be avoided.

Elimination of the Oversight Board would remove one level of the bureaucracy directing the RTC's actions. Consolidating the Oversight Board's policy guidance and the RTC Board's responsibility for day-to-day operations is more efficient and would lead to swifter decisionmaking and implementation at the RTC. SALSA would also prohibit the RTC Board from conducting closed meetings except when considering individual transactions. There has been some controversy about closed Oversight Board meetings and dispute over whether the Oversight Board has the authority to hold such meetings. The legislation would clarify that the new consolidated Board does not have such authority. This provision makes the RTC decisionmaking process open to the public while preserving the confidentiality necessary for the RTC when considering individual transactions involving private parties.

The present Oversight Board includes the Secretary of the Treasury, the Secretary of Housing and Urban Development and the Chairman of the Federal Reserve Board. These three individuals have a wide variety of important responsibilities and resolving the S&L crisis is only one of a number of matters competing for their time and attention. The RTC should be directed by individuals without major responsibilities in other areas. The consolidated

board this legislation would establish includes the members of the FDIC Board, who direct an agency that performs tasks similar to the RTC. Since FIRREA makes the FDIC the exclusive manager of the RTC, a policy role for the FDIC Board will improve coordination between RTC policy and day-to-day operations. The Board's four full-time public members appointed by the President would ensure that the RTC is overseen by individuals whose attention would not be diverted to other important responsibilities. This arrangement would provide the necessary accountability for the operations of the RTC while simplifying the Corporation's structure.

The Secretary of the Treasury would have authority over the Resolution Funding Corporation, the "shell" entity which issues the bonds to finance the RTC, and would review the RTC's operating plan and approve its budget. This would maintain administration control over the RTC's purse strings. Additional RTC funding would continue to require congressional authorization.

The legislation would also abolish the Office of Thrift Supervision and transfer supervisory authority over savings and loan associations to the Office of the Comptroller of the Currency. Authority over thrift-holding companies would move to the Federal Reserve, which currently regulates bank holding companies. To minimize disruption of the S&L rescue, OTS would not be abolished until August 1992, when OTS is slated to complete its task of placing insolvent thrifts under RTC conservatorship.

Supervising banks and thrifts requires similar expertise and regulations. In FIRREA, we moved to harmonize capital standards and other regulatory requirements for banks and thrifts. This is a welcome trend. We should take a further step in having the same regulator oversee both federally chartered banks and thrifts. This will ensure that both types of institutions receive similar regulatory treatment and compete on a level playing field.

Abolishing OTS would reduce the duplication of resources within two regulatory bodies. It would promote efficiency and reduce some costs. However, I do not advocate eliminating the expertise that exists within the OTS. I expect that many OTS personnel would move to the Comptroller's Office or the Federal Reserve as those agencies take over responsibility for thrift regulation.

My proposal would also make the OCC an independent agency rather than a part of the Treasury Department. The administration's financial restructuring proposal consolidates national bank and thrift supervision into a new Federal banking agency. However, the new agency would remain a part of the Treasury Department. The level of failures among banks supervised by the Federal Reserve compared to those supervised by the Comptroller's Office suggests the value of an independent regulator in supervising banks and preventing failures.

Consolidating bank and thrift supervision would also be a step toward increased functional regulation of financial services and markets. Functional regulation is an important element of many proposals to modernize our regulatory structure to reflect developments in the rapidly changing financial services industry. During the last Congress, the Banking Committee heard testimony on this matter from Gerald Corrigan, president of the New York Federal Reserve Bank and a leading advocate of the functional approach to regulation. This approach deserves careful attention as we consider financial restructuring legislation later this year.

Abolishing OTS does not mean there is no place for financial institutions that concentrate on home lending, the traditional role of S&L's. I believe there will continue to be a need and market niche for such institutions. Consolidating regulatory supervision does not necessarily mean we should abandon the Federal home loan bank system and other efforts to encourage and support mortgage credit and lending. However, I do believe we can reduce the number of Federal home loan banks.

Currently, there are 12 such institutions. The 12 banks have combined overhead expenses of nearly $285 million. This is almost as much as the entire thrift industry's contribution to the S&L bailout—$300 million per year. SALSA would reduce this to no more than five, allowing for efficiencies as the banks consolidate duplicative activities and resources. The Comptroller's Office and OTS can make do with five regional offices, so surely an efficient Federal home loan bank system could consolidate.

The legislation would also abolish the Federal Housing Finance Board [FHFB]. The President's delayed appointment of part-time members to this Board clearly indicates that the administration does not believe that the Board is important to our efforts to support housing or to the S&L rescue plan. The legislation would transfer responsibility for supervising the Federal home loan banks to the Federal Reserve Board. FIRREA established an Affordable Housing Program financed by contributions from the Federal home loan banks and administered by the FHFB. Under SALSA, HUD would administer this program. We can and should consider other arrangements. For example, we may want to establish or designate one supervising entity for the Federal home loan banks and Government sponsored enterprises.

The legislation clarifies that any existing rights, duties, or obligations of the United States, OTS, and the FHFB are not affected by the legislation, nor shall any lawsuits or other legal actions be abated by the legislation. Another provision provides that existing orders, resolutions, determinations, and regulations of the abolished agencies will remain in force unless and until changed by the successor agencies. These are important transition provisions to limit the disruption and confusion that might otherwise result from the legislation.

The legislation would also restructure the Board of Directors of the FDIC by removing the Director of OTS—abolished by the legislation—from the Board and making the Comptroller of the Currency a nonvoting member. There would be three voting members appointed by the President, one of whom would serve as Chairman.

Another provision of the legislation relates to the disposition of environmentally significant property acquired by the RTC. FIRREA contained a provision to help encourage the sale of environmentally valuable property to appropriate governmental agencies and conservation groups. I believe an important market exists for such properties. However, I have been disappointed with the RTC's efforts to pursue such sales and the recent decision not to enter into a memorandum of understanding with the Fish and Wildlife Service regarding the identification of these properties.

For this reason, I am proposing new procedures to guide the disposition of environmentally significant property. The Department of the Interior would be assigned the task of identifying properties with significant natural, cultural, recreational, or scientific value. Interior Department officials are better suited to perform this task than the RTC and this change would eliminate the need for the RTC to develop its own expertise, allowing the RTC to focus on its primary responsibilities. The Secretary of the Interior could direct the RTC to transfer particular properties with significant natural value to Federal or State agencies. The RTC would also be required to provide public agencies and nonprofit conservation groups with an opportunity to purchase such property before it can be offered to other purchasers.

SALSA would also further restrict the RTC's ability to borrow so-called working capital. Currently, the RTC can borrow up to 85 percent of the value of the assets it holds, available cash, and any borrowing authority not yet used by the Resolution Funding Corporation, the shell corporation that raises funds for the RTC. The legislation would reduce this limit of 75 percent.

Rising estimates of the need for working capital and the impact of this

borrowing on the Federal budget deficit have focused attention on this topic. The RTC may not be able to repay working capital borrowing if the returns from asset sales are significantly lower than expected. The value of the assets held by the RTC is a moving target and current estimates may prove high. For this reason, allowing the RTC to borrow up to 85 percent of the value of its assets could prove risky. We may need to allow further borrowing by the RTC but I am concerned that the present process allows the RTC too much leeway to borrow without congressional approval.

This, then, is what my proposal would do. Many of the problems that we saw last year may be attributed to the growing pains that can be expected at the start of any project of this scope and magnitude. Nevertheless, I believe the problems can be attributed in part to the cumbersome structure of the President's plan. The administration may be moving more aggressively on the S&L rescue now but a cumbersome structure has not helped so far and may again lead to problems in the future.

Although I did not include it in this legislation, I believe we should seriously consider consolidating regulation of most insured depository institutions. Establishing one independent regulator would help ensure that all institutions receive consistent treatment and compete on a level playing field. FIRREA was, in many ways, a step in this direction. Passage of SALSA would go a step further by folding OTS into the Comptroller's Office. If we keep moving toward more consistent and functional regulation, and I think we should, moving to a single, independent regulator for depository institutions would be efficient. Rather than chartering and regulating different types of institutions to meet different needs in the financial marketplace, we could simply allow institutions to determine their own market niche.

Congress will consider significant financial legislation this year. Deposit insurance reform and financial restructuring proposals are high on the agenda of both the administration and the Banking Committees. We will also need to provide the RTC with additional resources. The proposals included in SALSA should be an important part of the debate on these issues. I look forward to continuing to work with Chairman RIEGLE, Senator GARN, and my other colleagues on the Banking Committee as we address issues related to the savings and loan industry and the financial services industry.

By Mr. CRANSTON (for himself and Mr. MOYNIHAN):

S. 573. A bill to amend the Foreign Assistance Act of 1961 to condition the availability of security assistance for a foreign country on that country's compliance with fundamental guarantees of international humanitarian law applicable in situations of armed conflict, and for other purposes; to the Committee on Foreign Relations.

WAR CRIMES PREVENTION EDUCATION ACT

Mr. CRANSTON. Mr. President, I rise today to introduce the War Crimes Prevention Education Act of 1991. I am joined in this effort by my friend the distinguished senior Senator from New York [Mr. MOYNIHAN].

The war in the Persian Gulf brought home in a very vivid way the importance of respect for the 1949 Geneva Conventions and the other legal instruments that regulate the conduct of armed conflict.

A heightened interest in these rules of warfare came, and rightly so, as suspicions of Iraqi mistreatment of our POW's was confirmed in interviews Saddam's henchmen publicized for propaganda purposes.

In a nation with disturbing memories of the torture of United States prisoners in another war—Vietnam—these images were seared upon our consciences in a way the Brute of Baghdad could only dimly understand.

Mr. President, it is important to remember that both before August 2 of last year and after, Saddam Hussein oversaw the massive violations of all civilized conduct regarding warfare.

The use of weapons of mass destruction against both Iraqi Kurds and against Iranian combatants; the rape of Kuwait and the unprovoked Scud attacks against Israel's civilian population; the abuse of American and other allied POW's—all these acts of barbarism reaffirm the need for a new, and strengthened world order.

At the same time, Mr. President, I submit that the problem of war crimes is not the statutes which seek to prevent them. Rather it is the need for a more concerted effort by nations to make sure such rules are applied.

The general purpose of the 1949 Geneva Conventions and other rules concerning the conduct of warfare is to persuade nations that they will, in times of war, avoid certain inhumane acts while ensuring the performance of other fundamental guarantees.

The four conventions provide for the protection of the sick and wounded on land; the protection of the sick and wounded at sea and those who become shipwrecked; the treatment of prisoners of war, and the protection of civilians in times of war.

Mr. President, this bill seeks to redress a gaping hole in our foreign assistance legislation. Currently U.S. aid is conditioned on a country's respect for human rights and its nonsponsorship of terrorism. There are, however, no explicit provisions for a cutoff of assistance for those countries which commit war crimes.

This bill remedies that.

This bill ensures that all governments receiving American security assistance teach, as a matter of practice, the Geneva Conventions and other relevant rules of war to their own soldiers.

This would include warnings that orders by superiors to violate those rules are illegal and should be disobeyed. Following orders is no defense against war crimes.

And second, if, despite the training received in this area, a nation commits gross violations of international standards governing the conduct of armed conflict, all foreign assistance except for humanitarian aid will be cut off.

Mr. President, the gulf should have taught us the lesson that the old chestnut—that "the enemy of my enemy is my friend" is a false standard upon which to base our foreign policy.

It was part of our cold war strategy, and it didn't work well then either.

We considered Saddam our friend because he was, back in the 1980's, the enemy of the Iranians—who at the time were also our enemy of choice. And look what our so-called "friend" Saddam then went on to do.

Throughout the decade, we helped Saddam help himself to our technology, our financial credits and even our intelligence.

And, all the while, Saddam was stockpiling weapons that seemed to make him confident he could take on the entire world—and win.

At the close of World War II, Gen. George Marshall made a very sage observation.

Undoubtedly he was thinking of Hitler and Stalin. But General Marshall could have been just as easily talking about Saddam when he noted that countries that do not respect the human rights of their own citizens are unlikely to make good international neighbors either.

We must never forget, as we have forgotten so often in the past, that today's friendly dictator may be tomorrow's war criminal.

The United Nations should rigorously pursue and punish Iraqis responsible for the atrocities committed against Kuwaitis, the Scud attacks against Israeli civilians, and the abuse of United States war prisoners.

And I especially mean Saddam Hussein himself.

Today we are at the end of the cold war, if not on the eve of a celebrated New World Order. It is time to take stock of where we have been, and where we are going. And certainly part of that calculation includes the necessity of putting an end to the possibility we will embrace a future Saddam based on a quick read of who today's enemies of our enemies are.

The War Crimes Education Prevention Act of 1991, had it been in effect in 1983, would have prevented the United States the embarrassment of having to

go to war this year against a government which we only recently were aiding.

It would have disassociated America's good name and international standing from Iraq as the Kurds and the Iranians faced Saddam's weapons of mass destruction.

And it would have served as a signal that not only does the United States expect compliance with the Geneva Conventions governing armed conflict by our own troops, but also by those of nations which receive our assistance.

Mr. President, under the terms of my bill, "armed conflict" means a declared war or, in its absence, hostilities between the Armed Forces of two or more States, as well as hostilities involving government and dissident Armed Forces occurring within the territory of a particular State. This definition is rooted in the terms of article 3 common to all four Geneva Conventions.

Mr. President, violations of humanitarian law are fundamentally contrary to the principles of U.S. foreign policy and basic philosophy.

They are incompatible with long-term relationships by other nations with the United States.

Violations of rules of armed conflict by recipients of U.S. security assistance also tend to undermine support by the Congress and the people of the United States for these programs.

And serious violations of the laws of warfare by friendly Armed Forces severely damage their own effectiveness.

Mr. President, the time for declamatory statements about new world orders is past. The War Crimes Prevention Education Act of 1991 seeks to help bring a truly new era to our planet. We owe the men and women returning home from the gulf no less an effort.

I ask unanimous consent for a copy of my bill to be published in the RECORD, as well as a letter from American legal scholar Robert K. Goldman and recent articles from the Washington Post.

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

S. 573

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 "War Crimes Prevention Education Act of 1991".

SEC. 2. PROHIBITIONS ON ASSISTANCE FOR COUNTRIES VIOLATING FUNDAMENTAL GUARANTEES OF INTERNATIONAL HUMANITARIAN LAW.

Chapter 1 of part III of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 620F. PROHIBITIONS ON ASSISTANCE FOR COUNTRIES VIOLATING FUNDAMENTAL GUARANTEES OF INTERNATIONAL HUMANITARIAN LAW.

"(a) IN GENERAL.—(1) A principal goal of the foreign policy of the United States shall be to promote the increased observance by all countries of fundamental guarantees of international humanitarian law applicable in situations of armed conflict.

"(2)(A)(i) Except under circumstances specified in this section, no foreign assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of fundamental guarantees of international humanitarian law applicable in situations of armed conflict.

"(ii) Foreign assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1979 for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of fundamental guarantees of international humanitarian law applicable in situations of armed conflict unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration Act of 1979), that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses.

"(iii) Assistance may not be provided under chapter 5 of part II (relating to international military education and training) to a country the government of which engages in a consistent pattern of gross violations of fundamental guarantees of international humanitarian law applicable in situations of armed conflict unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.

"(B)(i) No foreign assistance may be available to any country that refuses to provide satisfactory assurances to the United States Government that its training programs for military officers will include adequate instruction on compliance with fundamental guarantees of international humanitarian law applicable in situations of armed conflict, or whose armed forces commit gross violations of such guarantees during an armed conflict.

"(ii) The President may, after submitting the basis for his decision in writing to Congress, waive the application of this subparagraph if he determines that the national security interests of the United States requires such waiver.

"(3) In furtherance of paragraphs (1) and (2), the President shall formulate and conduct international foreign assistance programs of the United States in a manner that will promote and advance fundamental guarantees of international humanitarian law applicable in situations of armed conflict and shall avoid identification of the United States, through such programs, with governments which violate fundamental guarantees of international humanitarian law applicable in situations of armed conflict.

"(b) ANNUAL REPORT.—The Secretary of State shall transmit to the Congress, as part of the presentation materials for foreign assistance programs proposed for each fiscal year, a full and complete report, prepared with the assistance of the Assistant Secretary of State for Human Rights and Humanitarian Affairs, with respect to practices regarding the observance of and respect for fundamental guarantees of international humanitarian law applicable in situations of armed conflict in each country proposed as a recipient of foreign assistance. In determining whether a government falls within the provisions of subsection (a)(3) and in the preparation of any report or statement required under this section, consideration shall be given to—

"(1) the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International Committee of the Red Cross; and

"(2) the extent of cooperation by such government in permitting an unimpeded investigation by any such organization of alleged violations of fundamental guarantees of international humanitarian law applicable in situations of armed conflict.

"(c) CONGRESSIONAL REQUESTS FOR INFORMATION.—(1) Upon the request of the Senate or the House of Representatives by resolution of either such House, or upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the Secretary of State shall, within 30 days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Assistant Secretary of State for Human Rights and Humanitarian Affairs, with respect to the country designated in such request, setting forth—

"(A) all the available information about observance of and respect for fundamental guarantees of international humanitarian law applicable in situations of armed conflict by that country, and a detailed description of practices by the recipient government with respect thereto;

"(B) the steps the United States has taken to—

"(i) promote respect for and observance of fundamental guarantees of international humanitarian law applicable in situations of armed conflict by that country and to discourage any practices which are inimical to such guarantees, and

"(ii) publicly or privately call attention to, and disassociate the United States and any foreign assistance provided for such country from, such practices;

"(C) whether, in the opinion of the Secretary of State, notwithstanding any such practices—

"(i) extraordinary circumstances exist which necessitate a continuation of foreign assistance for such country, and, if so, a description of such circumstances and the extent to which such assistance should be continued (subject to such conditions as Congress may impose under this section), and

"(ii) on all the facts it is in the national interest of the United States to provide such assistance; and

"(D) such other information as such committee or such House may request.

"(2)(A) A resolution of request under paragraph (1) of this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(B) The term 'certification', as used in section 601 of such Act, means, for the purposes of this subsection, a resolution of request of the Senate under paragraph (1) of this subsection.

"(3) In the event a statement with respect to a country is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within 30 days after receipt of such request, no foreign assistance shall be delivered to such country

except as may thereafter be specifically authorized by law for such country unless and until such statement is transmitted.

"(4)(A) In the event a statement with respect to a country is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating, restricting, or continuing foreign assistance for such country. In the event such a joint resolution is adopted, such assistance shall be so terminated, so restricted, or so continued, as the case may be.

"(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(C) The term 'certification', as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

"(d) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, funds authorized to be appropriated for foreign assistance may be made available for the furnishing of assistance to any country with respect to which the President finds that such a significant improvement in its record regarding fundamental guarantees of international humanitarian law applicable in situations of armed conflict, including the making of restitution to victims, has occurred as to warrant lifting the prohibition on furnishing such assistance in the national interest of the United States.

"(e) ALLOCATION OF FUNDS.—In allocating the funds authorized to be appropriated for foreign assistance, the President shall take into account significant improvements in the records of recipient countries regarding fundamental guarantees of international humanitarian law applicable in situations of armed conflict, including the making of restitution to victims, except that such allocations may not contravene any other provision of law.

"(f) REPORT ON ASSISTANCE.—Whenever the provisions of subsection (d) or (e) of this section are applied, the President shall report to the Congress before making any funds available pursuant to those subsections. The report shall specify the country involved, the amount and kinds of assistance to be provided, and the justification for providing the assistance, including a description of the significant improvements which have occurred in the country's record regarding fundamental guarantees of international humanitarian law applicable in situations of armed conflict, including the making of restitution to victims.".

"(g) DEFINITIONS.—For purposes of this section—

"(1) the term 'armed conflict' means a declared war or, in its absence, hostilities between the armed forces of two or more states, as well as hostilities occurring within the territory of a particular state as referred to in Article 3 of each of the four Geneva Conventions of 1949;

"(2) the term 'foreign assistance' means—

"(A) security assistance;

"(B) assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance); and

"(C) donations and credit sales of agricultural commodities under the Agricultural Trade Development Act of 1954,

but does not include humanitarian assistance;

"(3) the term 'four Geneva Conventions of 1949' means—

"(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, opened for signature on August 12, 1949, at Geneva;

"(B) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, opened for signature on August 12, 1949, at Geneva;

"(C) the Convention relative to the Treatment of Prisoners of War, opened for signature on August 12, 1949, at Geneva; and

"(D) the Convention relative to the Protection of Civilian Persons in Time of War, opened for signature on August 12, 1949, at Geneva;

"(4) the term 'fundamental guarantees of international humanitarian law applicable in situations of armed conflict' refers to those guarantees contained in the four Geneva Conventions of 1949 and to such other guarantees applicable to all armed conflicts as are recognized by customary international law (articles 4 through 6 of Additional Protocol II to such Conventions);

"(5) the term 'humanitarian assistance' means food, clothing, medicine, or other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death; and

"(6) the term 'security assistance' means—

"(A) assistance under chapter 2 (military assistance) or chapter 4 (economic support fund) or chapter 5 (military education and training) or chapter 6 (peacekeeping operations) or chapter 8 (antiterrorism assistance) of part II of this Act;

"(B) sales of defense articles or services, extensions of credits (including participations in credits), and guarantees of loans under the Arms Export Control Act; or

"(C) any license in effect with respect to the export of defense articles or defense services to or for the armed forces, police, intelligence, or other internal security forces of a foreign country under section 38 of the Arms Export Control Act.

SEC. 3. INTERNATIONAL MILITARY EDUCATION AND TRAINING (IMET).

Section 543(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2357b) is amended by inserting after "human rights" the following: "and of basic issues relating to fundamental guarantees of international humanitarian law applicable in situations of armed conflict (as defined in section 620F(d)(4))".

SEC. 4. POLICE TRAINING.

(a) IN GENERAL.—Section 660(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2420(b)) is amended—

(1) by striking out "or" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(3) by inserting at the end thereof the following new paragraph:

"(4) with respect to training relating to fundamental guarantees of international humanitarian guarantees applicable in situations of armed conflict (as defined in section 620F(d)(4)).".

(b) HONDURAS AND EL SALVADOR.—Section 660(d) of such Act is amended by striking out "or prolonged detention without trial" and inserting in lieu thereof "or gross violations of fundamental guarantees of international humanitarian law applicable in situations of armed conflict (as defined in section 620F(d)(4))".

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect on October 1, 1993.

[From the Washington Post, Mar. 3, 1991]

JUSTICE: WHAT IRAQ OWES ITS VICTIMS

(By Robert F. Turner)

The fighting in the Persian Gulf appears over, but fundamental questions remain to be resolved.

Just as it was necessary for the world community to expend billions of dollars and risk the loss of thousands of lives in order to uphold the legal principle that aggression must not be allowed to succeed, it is necessary to protect equally clear rules that states are legally responsible for their wrongful conduct—and that civilian and military leaders who plan, order or engage in "war crimes" are personally responsible for their actions.

The principle of "state responsibility" for wrongful conduct is universally accepted in international law, as is the doctrine of "reparations." In its 1928 Case Concerning the Factory at Chorzow, the Permanent Court of International Justice explained that the "essential principle contained in the actual notion of an illegal act . . . is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."

But since "restitution in kind" is often not possible (e.g., victims of torture and murder can't be made whole again), the most common form of reparations is "indemnity" or monetary damages. A third type of reparation under international law is "satisfaction," a remedy that primarily serves to address an injured state's loss of honor or dignity. This might involve a public admission by the wrongdoing state that its action was unlawful—as well, perhaps, as punishment of those who played a role in the wrongful conduct.

A major reason for insisting on reparations is that such "costs" serve as a deterrent to other states that might contemplate initiating aggression. It is all the more important in the present case, given the brutal and outrageous nature of the Iraqi conduct of the war—and, in particular, the senseless destruction of Kuwait during the final days of occupation.

Consider, for example, the oil that will be lost—not only from the hundreds of wells set ablaze by Saddam's forces but also that intentionally dumped into the Persian Gulf. If the world community were to announce that every barrel of lost oil will be regarded as a lost barrel of Iraqi oil—giving Kuwait the choice, perhaps, of "restitution in kind" by replenishment from Iraqi oil wells or of "indemnity" through cash payments—that might serve as a useful signal the next time an aggressor army contemplates gratuitously laying waste to a neighbor's natural resources. Sen. Richard G. Lugar (R-Ind.) has already proposed that the coalition "forge an agreement with Iraq" to divert a "large percentage" of oil revenues to reparations, with the rest going to the "constructive rebuilding of Iraq." In addition to claims by Kuwait and Israel, the United States and its allies in the coalition have strong claims against Iraq for the costs of the military operations necessitated by Iraq's refusal to abide by its treaty commitments and the directives of the U.N. Security Council.

Another fundamental "rule of law" that ought not be undermined by the present crisis is the principle established at Nuremberg that individuals—including high government officials—are criminally responsible for their participation in the planning and/or carrying out of the war crimes. It should be remembered, in this regard, that Iraq joined with

the entire world in 1946 in approving a U.N. General Assembly resolution affirming that the Nuremberg Principles are a part of customary international law.

Under Article 6 of the Nuremberg Charter, these principles include clear prohibitions against three types of crimes:

Crimes against peace, involving the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties."

War crimes, involving violations "of the laws or customs of war," such as "ill-treatment of prisoners of war, . . . killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity."

Crimes against humanity, which includes "murder, extermination, enslavement, deportation, or other inhumane acts committed against any civilian population, before or during the war." Article 7 of the charter established the important principle that even heads of state who engaged in war crimes are not protected by traditional rules of sovereign immunity.

While the Security Council, to date, has not formally called for the establishment of a post-conflict war-crimes tribunal, Resolution 674 of Oct. 29 expressly acknowledged that Iraq was liable for grave breaches of the 1949 Geneva Conventions, as were "individuals who commit or order the commission" of such war crimes. In addition, it observed that "under international law it [Iraq] is liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq." The Security Council "invited" all states "to collect relevant information regarding their claims, and those of their nationals and corporations, for restitution or financial compensation by Iraq with a view to such arrangements as may be established in accordance with international law." Thus, in addition to its efforts to uphold the prohibition against aggressive war embodied in Article 2(4) of the U.N. Charter, it is clear that the Security Council has set the stage for enforcing the "rule of law" regarding reparations and war crimes.

Much consideration has obviously already been given to these issues. Pentagon spokesman Pete Williams said last week that military lawyers have been "keeping track of potential war crimes, since this invasion started on Aug. 2." Saudi Lt. Gen. Khalid Bin Sultan put it this way: "We warn all who have taken part in the many crimes against innocent civilians in Kuwait, whether by rape, murder or torture, that they will be held responsible before an international court of justice and will be treated as criminals of war."

There will, understandably, be voices of caution, reminding us of the harm done by the harsh regime of reparations applied to Germany following its defeat in World War I—which many scholars believe paved the way for the next war. Others, no doubt, will argue that the Iraqi people should not be further punished for the horrendous behavior of Saddam.

But if, as I believe, the primary justification for bringing Saddam's aggressive war to an end was to uphold the "rule of law," it would be a great tragedy for the world community to weaken the very important legal principles of state responsibility and individual liability for war crimes.

In the wake of the cease-fire, how can these important legal principles be affirmed? In various ways, even in the absence of a total conquest of Iraq; Military officers captured in Kuwait City may be incarcerated until a full investigation concerning possible war crimes can be conducted; Saddam himself may lawfully be tried—in absentia if necessary, following the precedent established at Nuremberg with respect to the trial of the missing Martin Bormann. This would mean that Saddam would be subject to arrest and punishment at any time.

U.N. sanctions—including an embargo on exports and non-humanitarian imports—might be maintained until Iraq agrees to settle its financial debts and/or surrender for trial at least the most notorious accused war criminals. Furthermore, the world community certainly may condition any forbearance on full reparations upon reasonable international supervision and controls over Iraqi weapons programs and future military posture.

Whether this tragic experience leads to a new era of real international order, or is followed by the birth of new Saddam Husseins may, in substantial part, be determined by the ultimate costs that potential aggressors perceive to have been imposed upon Saddam and his fellow war criminals in response to their unconscionable behavior.

[From the Washington Post, Feb. 7, 1991]

AMERICA'S FRANKENSTEIN'S MONSTER

(By Jim Hoagland)

Iraq's army will not fare as well in this war as it did against Iran. This time, the Iraqis won't have the United States to help them.

At least, not directly. But Saddam Hussein does have the fruits of a secret six-year intelligence exchange with the United States to draw on as he fights American forces.

Saddam knows more about American battlefield intelligence capabilities than all but a handful of other foreign leaders, thanks to Ronald Reagan, William Casey and aides. The fact that Saddam still has secure communication channels to his corps commanders in the middle of history's heaviest air raids suggests that he knew enough about U.S. interception and jamming abilities to take special steps to thwart them.

The Iraqi-U.S. intelligence connection was the poisonous acorn from which sprouted a giant oak of misunderstanding between Baghdad and Washington. Casey's CIA was so busy telling Saddam our secrets that it had little time or stomach to gather his. Reagan and Casey also forgot to warn Saddam that there were limits to American tolerance of brutality and aggression. The oak of misunderstanding helped produce the Persian Gulf War.

An American official involved in the U.S. decision to give the Iraqis coordinates on Iranian troops' positions and other data derived from U.S. satellite photography offers a different metaphor. The exchange was to be "the bait on the hook," this official says, a policy morsel to draw the Gulf's most militarily powerful Arab state away from the Soviet Union.

The more cynical, hidden reason was to keep Iraq in the war and bleeding Iran. But that devious scheme was lost sight of as U.S. Policy makers convinced themselves that Saddam had the makings of becoming "our S.O.B." With coaching from the CIA and the State Department, the Iraqi strongman would moderate. Instead, he became America's own Frankenstein's monster.

The existence of the Iraqi-U.S. intelligence connection was exposed in 1986. Iraqi officials publicly (and falsely) complained that Washington had provided Baghdad with doctored intelligence to cause Iraqi defeats. What was not exposed was that the exchange began two full years before Washington and Baghdad established diplomatic relations in July of 1984.

In 1982 Iraq was still on the State Department's list of governments that sponsored terrorism. But Saddam's regime was removed from that list at about the time the CIA began turning over its secret data; that is, at a time when Iraq was in no direct danger of being overwhelmed by Iranian troops and when notorious terrorist groups were still based in Baghdad.

With no secure channels into Baghdad, Washington routed the intelligence data through the U.S. Embassy in Amman. It was so sensitive that Jordan's King Hussein personally oversaw the transfer to Baghdad. By 1985 Casey had opened a CIA shop in Baghdad to manage the traffic. Not even the "accidental" Iraqi fighter attack on the USS Stark in May of 1987 interrupted the flow before the war's end in 1988.

"My sense was that it was primitive raw data on coordinates and troop positions, but it saved the Iraqis from being overrun in several key battles," recalls Howard Teicher, who directed political military affairs on the White House's National Security Council staff from 1983 to 1986. "You have to ask now what Saddam learned about us from what he was seeing. He seems to have switched quickly to more secure land-line communications to his commanders after we neutralized his microwave relay network. It is fair to ask when he began to build in so much redundancy."

Teicher's own story is Washington policy making as farce. I first met him in 1978, when he was a young government analyst already predicting that Iraq would invade Iran. His detailed analyses of Iraq's growing military capabilities and ambitions were well ahead of the curve. But when Teicher put these into a secret policy paper at the Pentagon the next year, senior Carter administration officials kicked it back to him, ridiculing the idea that Iraq would invade Iran—a year before that happened.

Opposing cuddling up to Iraq led Teicher onto the periphery of the Iran-contra scandal, which cost him his NCS job. Now in private business in Washington, one of the best analysts of Iraq's military is unconsulted by a government at war with Iraq. He is not even consulted by the talk shows. Sic transit gloria Washington.

The point is not to recite individual past judgments, right and wrong, on Iraq. The point is that the entire system failed. The CIA developed a vested interest in seeing Saddam as a customer, as our kind of dictator. It is hard to believe that intelligence gathering on Saddam and his regime was as vigorous as it should have been. We forgave Saddam too quickly when he apologized for the Stark and then gassed his own citizens for that to have been the case.

The "bait on the hook" gave the practitioners of espionage a dominant position in the U.S.-Iraqi relationship. Saddam promptly assigned one of his top intelligence operatives as his ambassador to Washington. The United States did in Baghdad what it did in other Arab capitals during the past three decades: It made the CIA station chief more important in local eyes than the U.S. ambassador.

Washington will be tempted to repeat this mistake in dealing with the brutal, secretive governments of the Middle East. Syria, a coalition partner against Iraq, is a current candidate. But the blood borne on Desert Storm

shows what folly reliving that bit of history would be.

THE AMERICAN UNIVERSITY,
Washington, DC, March 6, 1991.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRANSTON: I very much appreciate this opportunity to comment on the War Crimes Prevention Education Act of 1991. As one who for over ten years has taught international humanitarian law, i.e., the laws of armed conflict, and has investigated and documented serious violations of this law in numerous conflicts, I strongly endorse enactment of this legislation. By design and as elaborated, this bill advances fundamental goals of U.S. foreign policy and of the international community as well.

As a State Party to the 1949 Geneva Conventions, the United States has an affirmative obligation to respect and to ensure the fundamental guarantees enshrined in these instruments under all circumstances. In particular, the Conventions impose an express obligation on all State Parties to search for persons alleged to have committed grave breaches, i.e., war crimes, to bring them to trial or extradite them and to take necessary measures to suppress all acts contrary to the Conventions. By conditioning U.S. security assistance on a recipient government's training of its armed forces in international humanitarian law and, most importantly, by denying or terminating such assistance to a government which grossly violates the fundamental guarantees of this law in situations of armed conflict, this bill seeks to eliminate or reduce the commission of war crimes during armed conflicts. As such, it implements one of the basic goals of the Conventions and strengthens our government's duty to ensure respect for these instruments.

This bill also advances important national security interests of the United States. The same considerations which led the Congress in 1976 to link security assistance to a particular country's human rights record also support its linking such assistance to that country's compliance with basic humanitarian law norms during armed conflicts. These considerations are articulated clearly in Section 502B of the Foreign Assistance Act of 1961 which declares, inter alia, that a principal goal of U.S. foreign policy, in accordance with our obligations under the U.N. Charter and "in keeping with our constitutional heritage and traditions," shall be "to promote the increased observance of internationally recognized human rights by all countries." It also directs the President to formulate and conduct security assistance programs in a manner which will promote and advance human rights and "avoid identification of the United States with governments which deny to their people internationally recognized human rights and fundamental freedoms."

This is a sound and enduring statement of U.S. foreign policy goals. By engrafting, in an analogous manner, humanitarian law considerations on U.S. security assistance programs, this bill not only poses no conflicts for our national security interests, but actually will promote and enhance those interests in the long run. There is, in my view, nothing more detrimental to U.S. security interests than furnishing security assistance to a country whose armed forces systematically violate fundamental guarantees of humanitarian law during armed conflicts. Such violations by recipients of U.S. security assistance not only undermine public and congressional support for such programs, but inevitably reflect adversely on our government and us as people. In such situations, the United States runs the risk of becoming identified as an accomplice to these unlawful and frequently barbaric acts.

It is also important to note that this bill is not duplicative of existing statutory conditions on security assistance programs. While human rights law and international humanitarian law have mutually reinforcing norms and share a common core of irreducible or non-derogable rights, they essentially have different fields of application. Although technically applicable during armed conflicts and other emergency situations, human rights law is preeminently peacetime law. In fact, the principal human rights treaties contain clauses permitting state parties to lawfully suspend the great majority of guaranteed rights during emergency situations. Since a situation of armed conflict, particularly internal hostilities, ordinarily constitutes a public emergency, the state in principle would be free to invoke its rights to derogate.

In contrast, international humanitarian law applies during armed conflicts. Its fundamental guarantees are designed to protect and ameliorate the conditions of victims of such conflicts and thus affords these persons far more protection than do the general guarantees of human rights law, requires state parties to enact domestic legislation necessary to provide effective penal sanctions for persons who commit or order any grave breach of the Conventions. Such breaches, entailing individual criminal responsibility, violate fundamental guarantees of persons or property protected by the Conventions and are regarded as war crimes.

In this connection, the phrase in the bill "violations of fundamental guarantees of international humanitarian law applicable in situations of armed conflict" implicitly refers to and incorporates by reference the "grave breach" provisions in the 1949 Geneva Conventions, as well as other war crimes recognized by customary international law. Further, it is my understanding that in order for infractions of these fundamental guarantees to meet the "gross violations" standard in the bill, these violations by the armed forces would have to be so recurrent and systematic as to constitute a practice attributable to the government. Accordingly, the bill appropriately does not mandate denying or terminating security assistance to a government for the occasional violation that inevitably occurs during all armed conflicts.

Skeptics will claim that the bill contains unworkable and intrusive standards that, if implemented, will further complicate and burden the Executive's conduct of foreign policy. But, it is worth recalling that similar dire predictions and objections were made in 1976 by opponents of Section 502B. Just as that legislation seeks to avoid this country's identification with governments that grossly violate internationally recognized human rights, this bill distances the United States from governments whose armed forces grossly violate fundamental guarantees of international humanitarian law. This is sound and timely legislation which is consistent with the fundamental values of the American people. As such, I commend it to your colleagues.

Sincerely,

ROBERT KOGOD GOLDMAN,
Professor of Law and
Louis C. James Scholar.

By Mr. CRANSTON (for himself, Mr. KERRY, Mr. KENNEDY, Mr. MOYNIHAN, Mr. INOUYE, Mr. PELL, Mr. CHAFEE, Mr. SIMON, and Mr. AKAKA):

S. 574. A bill to amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of affectional or sexual orientation, and for other purposes; to the Committee on the Judiciary.

CIVIL RIGHTS AMENDMENTS ACT

Mr. CRANSTON. Mr. President, I am today introducing legislation on behalf of myself, the Senators from Massachusetts [Mr. KENNEDY and Mr. KERRY], the Senator from New York [Mr. MOYNIHAN], the Senators from Hawaii [Mr. INOUYE and Mr. AKAKA], the Senators from Rhode Island [Mr. PELL and Mr. CHAFEE], and the Senator from Illinois [Mr. SIMON], which would amend the Civil Rights Act of 1964 to prohibit discrimination in employment, housing, public accommodations, or federally assisted programs on the basis of affectional or sexual orientation.

Mr. President, it is time that our Nation's civil rights laws are amended to make it clear that discrimination against individuals on the basis of their sexual orientation is wrong. I firmly believe that it is just as wrong to discriminate on the basis of an individual's sexual orientation as it is to discriminate on the basis of sex, religion, race, age, national origin, or disability. We have an obligation to fight against invidious discrimination whatever the form. Our laws must prevent unfair discrimination against all individuals.

Justice and fair play are deeply embedded concepts in our society. Discrimination on the basis of an individual's sexual orientation is simply unfair. It also violates the traditional American respect for privacy and individual freedoms.

Despite the general view that discrimination against individuals because of sexual orientation is wrong, there is little question that gay and lesbian Americans repeatedly face discrimination, hostility, and prejudice in many communities throughout the Nation. This legislation is needed to bring an end to that discrimination, to provide a clear remedy to redress violations of individual rights, and to make it clear that this type of discrimination is wrong and unlawful.

Mr. President, this legislation would not establish any special treatment or rights. It would simply extend to gay men and lesbian women basic protections against invidious discrimination because of sexual orientation.

Mr. President, the time is long past due for this fundamental concept of fairness to be embedded in our civil rights laws. I urge my colleagues to support this legislation.

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. 574

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 "Civil Rights Amendments Act of 1991".

SEC. 2. PUBLIC ACCOMMODATIONS.

(a) EQUAL ACCESS.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting after "religion," the following: "affectional or sexual orientation,"; and

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

"(f) As used in this section, the term 'affectional or sexual orientation' means male or female homosexuality, heterosexuality, and bisexuality by orientation or practice, by and between consenting adults.".

(b) PROHIBITION ON DISCRIMINATION REQUIRED BY LAW.—Section 202 of such Act (42 U.S.C. 2000a-1) is amended—

(1) by inserting "(a)" before "All persons";

(2) by inserting after "religion," the following: "affectional or sexual orientation,"; and

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

"(b) As used in this section, the term 'affectional or sexual orientation' means male or female homosexuality, heterosexuality, and bisexuality by orientation or practice, by and between consenting adults.".

SEC. 3. PUBLIC FACILITIES.

Section 301 of the Civil Rights Act of 1964 (42 U.S.C. 2000b) is amended—

(1) in subsection (a), by inserting after "religion," the following: "affectional or sexual orientation,"; and

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

"(c) As used in this section, the term 'affectional or sexual orientation' means male or female homosexuality, heterosexuality, and bisexuality by orientation or practice, by and between consenting adults.".

SEC. 4. FEDERALLY ASSISTED OPPORTUNITIES.

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

(1) by inserting "(a)" before "No person";

(2) by inserting after "color," the following: "affectional or sexual orientation,"; and

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

"(b) As used in this section, the term 'affectional or sexual orientation' means male or female homosexuality, heterosexuality, and bisexuality by orientation or practice, by and between consenting adults.".

SEC. 5. EQUAL EMPLOYMENT OPPORTUNITIES.

(a) IN GENERAL.—Subsections (a) through (e), and (j), of section 703, and sections 704(b), 706(g), and 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2 (a) through (e), and (j), 2000e-3(b), 2000e-5(g), and 2000e-16(a)) are amended by inserting after "sex," each place the term appears the following: "affectional or sexual orientation,".

(b) UNLAWFUL EMPLOYMENT PRACTICES.—Section 703(h) of such Act (42 U.S.C. 2000e-2(h)) is amended—

(1) by inserting after "sex" the first place the term appears the following: ", affectional or sexual orientation"; and

(2) by inserting after "sex" the second place the term appears the following: ", affectional or sexual orientation,".

(c) EMPLOYMENT BY FEDERAL GOVERNMENT.—Section 717(c) of such Act (42 U.S.C. 2000e-16(c)) is amended by inserting after "sex" the following: ", affectional or sexual orientation,".

(d) DEFINITION.—Section 701 of such Act (42 U.S.C. 2000e) is amended by adding at the end the following new subsection:

"(l) The term 'affectional or sexual orientation' means male or female homosexuality, heterosexuality, and bisexuality by orientation or practice, by and between consenting adults.".

SEC. 6. INTERVENTION AND PROCEDURE

Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h-2) is amended—

(1) by inserting "(a)" before "Whenever";

(2) by inserting after "sex" the following: ", affectional or sexual orientation,"; and

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

"(b) As used in this section, the term 'affectional or sexual orientation' means male or female homosexuality, heterosexuality, and bisexuality by orientation or practice, by and between consenting adults.".

SEC. 7. HOUSING SALE, RENTAL, FINANCING, AND BROKERAGE SERVICES.

(a) SALE OR RENTAL OF HOUSING.—Section 804 of the Civil Rights Act of 1968 (42 U.S.C. 3604), is amended by inserting after "religion," each place the term appears the following: "affectional or sexual orientation,".

(b) FINANCING OF HOUSING.—Section 805 of such Act (42 U.S.C. 3605) is amended by inserting after "religion," the following: "affectional or sexual orientation,".

(c) PROVISION OF BROKERAGE SERVICES.—Section 806 of such Act (42 U.S.C. 3606) is amended by inserting after "religion," the following: "affectional or sexual orientation,".

(d) DEFINITION.—Section 802 of the Civil Rights Act of 1968 (42 U.S.C. 3602) is amended by adding at the end the following new subsection:

"(p) 'Affectional or sexual orientation' means male or female homosexuality, heterosexuality, bisexuality by orientation or practice, by and between consenting adults.".

SEC. 8. PREVENTION OF INTIMIDATION.

Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting after "religion," each place the term appears the following: "affectional or sexual orientation (as such term is defined in section 802),".

SEC. 9. RULE OF INTERPRETATION.

No amendment made by this Act shall be construed to permit or require—

(1) that a determination regarding the existence of discrimination be based on any statistical difference between—

(A) the incidence of persons of a particular affectional or sexual orientation in the general population; and

(B) the incidence in the activity in which such discrimination is alleged; or

(2) the fashioning of any remedy requiring any sort of quota for persons of any particular affectional or sexual orientation in the activity in which such discrimination is alleged.

SEC. 10. RIGHT OF PRIVACY PROTECTED.

Nothing in this Act or any amendment made by this Act shall be construed to require any person to disclose a personal affectional or sexual orientation.

By Mr. LAUTENBERG (for himself, Mr. CHAFEE, Mr. MITCHELL, Mr. MOYNIHAN, Mr. METZENBAUM, Mr. BRADLEY, Mr. AKAKA, Mr. INOUYE, Mr. SHELBY, Mr. DASCHLE, Mr. KENNEDY, Mr. PELL, and Ms. MIKULSKI):

S. 575. A bill entitled the "Radon Testing for Safe Schools Act"; to the Committee on Environment and Public Works.

RADON TESTING FOR SAFE SCHOOLS ACT

• Mr. LAUTENBERG. Mr. President, today I am reintroducing the Radon Testing For Safe Schools Act. This bill, which Senator CHAFEE and nine other Senators are cosponsoring, will address the health threat that radon poses in our country's schools.

Mr. President, radon is one of the most serious environmental health risks facing the country today. EPA estimates that as many as 16,000 people die of lung cancer each year from exposure to radon. In September 1988 EPA and the Surgeon General's Office issued a national health advisory urging people to test their homes after survey results showed that one in four homes in 17 States surveyed has elevated radon levels. At the Superfund Subcommittee's hearing on this bill last year, Assistant Surgeon General Vernon Houk said that the evidence of the health threat posed by radon is the strongest of any environmental contaminant.

In April, 1989, EPA completed a pilot survey to measure radon levels in 130 schools across the country. This survey found that one in five classrooms has elevated radon levels and that over half of the schools tested have at least one classroom with elevated radon levels. And Assistant Surgeon General Houk testified at our hearing that radon poses a greater risk to children than to adults. Our Nation's children are needlessly exposed to dangerous radon levels, which may be especially hazardous to their developing lungs.

Fortunately, it is relatively simple and inexpensive to test for and mitigate elevated levels of radon. EPA estimates that the average cost to test a school is roughly $1,000 and that the average mitigation cost is only a few thousand dollars per school. Given these facts, it is inexcusable to simply ignore the threat posed by radon to schoolchildren.

The Congress has consistently expressed its concern about radon in schools. Legislation I wrote, which was included in the 1986 Superfund Amendments and Reauthorization Act, requires EPA to "identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions." And in 1988, the Congress passed legislation introduced by Senator CHAFEE, Senator MITCHELL, myself, and others requiring EPA to conduct a national survey of radon in schools.

The Radon Testing For Safe Schools Act builds on this national effort to

identify radon prone areas. It requires schools in priority radon areas designated by EPA to test for radon within 2 years of a designation. EPA would be required to develop guidelines for the testing and remediation of radon in school buildings. And EPA would provide $5 million per year for 5 years to States to assist schools in remediating elevated radon levels.

The bill I am introducing today is the same bill which was approved by the Senate Environment Committee last year and passed the Senate as an amendment to S. 657, the Indoor Air Quality Act. Unfortunately, the other body failed to address this important issue.

The Radon Testing For Safe Schools Act will expand our efforts to address the health threat that radon poses to our country's children. Testing and mitigating schools, where children spend hours every day, will significantly reduce their chances of contracting lung cancer. This bill has been endorsed by both the National Education Association, the National Parent-Teacher Association, the Consumer Federation of America, the American Lung Association and the Coalition for Consumer Health and Safety, a coalition of 20 insurance companies and associations and 16 consumer and health organizations working to improve consumer health and safety.

I urge my colleagues to join in supporting this legislation. And I ask unanimous consent that a copy of the bill, letters in support of the bill, and an EPA press release urging schools to test for radon be included in the CONGRESSIONAL RECORD.

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

S. 575

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

SECTION 1. This Act may be cited as the "Radon Testing for Safe Schools Act".

FINDINGS

SEC. 2. THE CONGRESS FINDS THAT.—(a) Exposure to radon gas causes about 20,000 lung cancer deaths each year.

(b) Radon may be especially hazardous to small children who spend a substantial portion of a day in school buildings.

(c) Testing for and remediation of elevated levels of radon is relatively simple and inexpensive.

(d) Studies by the Environmental Protection Agency indicate that 54 per centum of schools tested above have at least one room with elevated levels of radon and that over 20 per centum of all school rooms tested had elevated levels of radon.

(e) On April 20, 1989, the Administrator of the Environmental Protection Agency issued a national advisory recommending that all schools be tested for radon.

(f) There is a need for improved information on proper methods and procedures for testing and remediation of radon in school buildings.

(g) There is a need for the Federal Government to provide financial assistance to States and local educational agencies for implementation of measures to reduce elevated levels of radon.

REQUIREMENT FOR RADON TESTING IN SCHOOLS

SEC. 3. Section 307 of the Indoor Radon Abatement Act of 1989 (15 U.S.C. 2601 et seq.) is amended by adding at the end thereof the following new subsections:

"(c) GUIDELINES.—(1) Within one year of the date of enactment of this subsection, the Administrator shall publish guidelines on testing for and remediating radon in school buildings.

"(2) After the publication of guidelines pursuant to this subsection, testing and remediation carried out pursuant to this section shall be conducted in a manner consistent with such guidelines.

"(3) Any radon testing or remediation of school buildings conducted prior to the publication of guidelines pursuant to this subsection shall be considered to meet the requirements of this section if the testing or remediation is conducted consistent with any interim guidance published by the Administrator or a State where the Administrator determines that such guidelines are substantially consistent with the guidelines published under this subsection.

"(d) REQUIREMENT FOR RADON TESTING.—(1) Within two years after designation by the Administrator of an area as a priority radon area each local educational agency located in whole or in part in such designated area shall conduct tests for radon in each school building owned or operated by the local educational agency.

"(2) The Administrator may extend the schedule for testing for radon pursuant to this subsection to the date two years from the date of publication of testing guidelines pursuant to subsection (c) of this section.

"(3) The Administrator shall, as expeditiously as practicable, designate areas as priority radon areas based on—

"(A) surveys of residences for radon; or

"(B) the survey required by paragraph (4) of subsection (a) of this section; or

"(C) other date, including geological data.

The Administrator shall designate areas pursuant to this paragraph no later than September 30, 1991.

"(4) The results of any tests conducted pursuant to this section by a local eductional agency shall be available for public review in the administrative offices of the local educational agency during normal business hours. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such results and shall send the results to the Administrator and the agency of the State implementing radon programs.

"(5) Any radon testing conducted pursuant to this section shall be supervised by a person who has received instruction pursuant to an EPA or equivalent State approved program, as determined by the Administrator and shall use radon measurement devices and methods approved by the radon proficiency program established pursuant to section 305(a)(2) of this title.".

RADON IN SCHOOLS REMEDIATION GRANT ASSISTANCE

SEC. 4 (a) AUTHORIZATION.—Section 306(j)(1) of the Indoor Radon Abatement Act of 1989 (15 U.S.C. 2601 et. seq.) is amended by inserting after "1991" the following—"and $15,000,000 for fiscal year 1992".

(b) SCHOOL REMEDIATION.—Section 306(j) of the Indoor Radon Abatement Act of 1989 (15 U.S.C. 2601 et. seq.) is amended by adding at the end thereof the following new paragraphs—

"(6) Of funds appropriated pursuant to this subsection in fiscal year 1992, not more than one third shall be used to implement radon remediation measures for local educational agencies pursuant to paragraphs (11) and (12) of subsecion (c) of this section.

"(7) Of funds appropriated pursuant to this subsection in fiscal year 1992, the Administrator may reserve an amount up to 2 per centum or $200,000, whichever is the greater, for the purposes of making grants to local educational agencies for implementation of measures to reduce radon levels: *Provided*, That any such local educational agency is prohibited by State law from receiving grant assistance from the State: *Provided further*, That the local educational agency provides not less than 50 per centum of the cost of implementing such measures from non-Federal sources.

"(8) There is authorized to be appropriated for grant assistance under paragraphs (11) and (12) of subsection (c) of this section an amount not to exceed $5,000,000 for each fiscal years 1993, 1994, 1995, and 1996.

"(c) GRANT ELIGIBILITY.—Section 306(c) of the Indoor Radon Abatement of 1989 (15 U.S.C. 2601 et. seq.) is amended by adding at the end thereof the following new paragraphs—

"(11) Notwithstanding the limitation in subsection (i)(4), payment, in the form of grants or loans, of costs of implementing remediation measures necessary to prevent levels of radon in school buildings above the appropriate action levels identified pursuant to section 303(b)(1) of this title: Provided, That such payments are made in consideration of the financial need of the applicant.

"(12) Payment of costs of conducting radon tests required pursuant to section 307(d) of this title: Provided, That such payments shall be made only in the case of a local educational agency which received assistance payment to paragraph (11) of this subsection.

"(d) CLARIFICATION.—Section 306(g) of the Indoor Radon Abatement Act of 1989 (15 U.S.C. 2601 et. seq.) is amended by striking "and (6)" and inserting in lieu thereof "(6), (11), and (12)".

"(e) TESTING AND REMEDIATION STANDARDS.—(1) Section 306(g) of the Indoor Radon Abatement Act of 1989 (15 U.S.C. 2661 et. seq.) is amended by inserting after 'Governments.—' the following '(1)' and inserting at the end thereof the following new paragraph—

"(2) Any remediation measures for reducing radon in school buildings implemented pursuant to this section shall be supervised by a person who has been approved pursuant to the proficiency program established pursuant to section 305(a)(2) of this title.".

DEFINITION

SEC. 5. Section 302 of the Indoor Radon Abatement Act of 1989 (15 U.S.C. 2601 et. seq.) is amended by adding at the end thereof the following new paragraph—

"(5) The term 'priority radon area' means an area or region of the United States in which, in the judgment of the Administrator, there is a reasonable likelihood of indoor radon levels above the appropriate action level identified pursuant to section 303(b)(1) of this title.".

PREEMPTION

SEC. 6 (a) CONSTRUCTION OF PROVISIONS AS NOT PREEMPTING OTHER LAWS.—Nothing in this title shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

(b) AWARD OF COSTS AND DAMAGE AWARDS.—Nothing in this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the testing or mitigation of radon contamination, or a portion of such costs, at any time.

(c) CONSTRUCTION OF PROVISIONS AS NOT PROHIBITING MORE STRINGENT STATE REQUIREMENTS.—Nothing in this title shall be construed or interpreted as preempting a State from establishing any liability or more stringent requirements with respect to radon in school buildings within such State.

(d) CREATION OF CAUSE OF ACTION.—Nothing in this title creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(e) EFFECT OF PROVISIONS IN CIVIL ACTIONS FOR DAMAGES.—It is not the intent of Congress that this subsection or rules, regulations, or orders issued pursuant to this subsection be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to radon. This subsection does not affect the authority of any court to make a determination in any adjudicatory proceedings under applicable State law with respect to the admission into evidence or any other use of this title or rules, regulations, or orders issued pursuant to this title.

THE COALITION FOR CONSUMER HEALTH AND SAFETY,
Washington, DC, September 28, 1989.

Hon. FRANK R. LAUTENBERG,
Chairman, Subcommittee on Superfund, Ocean and Water Protection, Environment and Public Works Committee, U.S. Senate.

DEAR SENATOR LAUTENBERG: As part of its concern about indoor air pollution the Coalition for Consumer Health and Safety is writing to express its support of the Radon Testing for Safe Schools Act.

We are a coalition of 20 insurance companies and trade associations and 16 consumer and health organizations working to improve consumer health and safety. As our written Agenda explains—a copy of which we are pleased to enclose—indoor air pollution is one of the seven key issues we are focusing our efforts upon. And radon, which the Environmental Protection Agency estimates causes between 5,000 and 20,000 lung cancer deaths annually, is certainy one of the major indoor air contaminants in the country today.

Radon in school buildings, of course, is of particular concern because recent research suggests that children are even more vulnerale than adults to the hazards of radon. And testing done earlier this year by the EPA found unexpectedly high radon levels in schools in many parts of the country.

We believe that the Radon Testing for Safe Schools Act is a prudent, measured response, based on the currently available scientific evidence, to the problem of radon in schools. It does not require testing of all schools in the country, but rather only of schools in areas identified by the EPA as having elevated levels of radon. And by establishing a modest program within the EPA for the provision of loans and grants to local educational agencies in high radon areas, the legislation makes it possible for targeted schools to test for and, if necessary, mitigate hazardous radon levels.

We commend you for your leadership on this important issue.

Sincerely,

AL PARSONS,
American Insurance Association;

DAVID SWANKIN,
Consumer Federation of America;
Co-Chairs, Committee on Indoor Air Quality.

AMERICAN LUNG ASSOCIATION,
Washington, DC, September 8, 1989.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: On behalf of the American Lung Association, I am writing to support legislation which you plan to introduce to require local educational agencies to conduct testing for radon contamination in schools. "The Radon Testing for Safe Schools Act" represents a significant step toward addressing and rectifying the health threat posed by radon exposure, particularly in our nation's schools.

The ALA continues to be particularly concerned that the potential for increased exposure to indoor contaminants is exacerbated by the onslaught of energy conservation techniques and efforts to reduce heating and cooling costs through the reduction of infiltration and ventilation. Radon is among the indoor pollutants of primary concern to the ALA. Others include carbon monoxide and nitrogen oxides, formaldehyde and asbestos.

The ALA also continues in its strong support for increased research on the health effects of indoor and outdoor air pollution. The increase and integration of research are essential to permitting the development of appropriate control strategy. The testing and radon mitigation activities mandated in your legislation are just as critical. We know that you share this perspective, and again, we congratulate you on the foresight shown in the introduction of the "Radon Testing for Safe Schools Act."

Sincerely,

FRAN DU MELLE,
Director.

AMERICAN ACADEMY OF PEDIATRICS,
Washington, DC, November 9, 1989.

Hon. FRANK R. LAUTENBERG,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: The American Academy of Pediatrics supports in principle S. 1697, the "Radon Testing for Safe Schools Act." The Academy is concerned about the hazards of radon exposure to children and commends your efforts in this area.

We support radon testing of schools by reputable companies and recommend that radon reduction procedures be undertaken when elevated levels are indicated. S. 1697 is an important measure that provides funding for testing of schools in areas identified as having elevated levels of radon. The legislation also provides funding to assist in mitigation.

While we support S. 1697, we have some concerns that we would like to see addressed:

The concept of a radon high risk area should be clearly defined.

There should be a sufficient number of companies with qualified staff to mitigate exposure to radon where needed once testing is completed.

We appreciate your attention to this critical health issue, and look forward to working with you on this important legislation. Please contact our office if you have any questions.

Sincerely,

BIRT HARVEY, M.D.,
President.

EPA URGES SCHOOLS TO CHECK FOR RADON

U.S. Environmental Protection Agency Administrator William K. Reilly today recommended that schools test their facilities for radioactive radon gas.

Reilly said, "Based on work just completed by the agency's Office of Radiation Programs, I can report to you today that elevated levels of radon gas have been found in school buildings throughout the United States. Indoor radon is one of the major environmental health threats facing Americans, and I am now recommending that schools nationwide be tested."

Reilly said he made the decision to inform the public after examining preliminary test data from 130 schools scattered across the country which indicate that elevated radon levels may be at least as prevalent in schools as in private residences.

EPA is recommending that schools test 100 percent of frequently-used rooms on the basement-level and ground-level floors. This includes classrooms, offices, libraries, gymnasiums and cafeterias. The agency also recommends that testing be conducted in the cooler months of the year when doors and windows are likely to be closed.

To assist school officials considering taking radon measurements in their buildings, the agency released interim guidance which discusses facts about radon, its health risks and what is known about radon in schools. It also explains how to conduct testing, select measurement devices, which rooms to measure and follow-up actions. The guidance is designed expressly for schools, although protection for children involves testing in both homes and schools.●

● Mr. CHAFEE. Mr. President, I am pleased that today we are introducing a bill which, when implemented, should prevent the exposure of thousands of our school children to dangerous levels of radon gas.

Three years ago I introduced the Radon in Schools Detection Act, a bill which required EPA to determine the extent of radon contamination in the Nation's schools. This bill was later combined with legislation introduced by Senator MITCHELL, to form the Radon Program Development Act of 1988. The Senate unanimously approved this legislation, and it was subsequently signed into law.

EPA is currently implementing this law by providing seed money to States to develop radon programs, issuing publications alerting homeowners to the potential health effects of radon, identifying EPA approved contractors and testing labs, and conducting a preliminary assessment of radon in our schools. The results of this preliminary assessment are alarming: 54 percent of the 130 schools tested had at least one room with radon levels above the EPA recommended action level.

The legislation we are introducing today builds on the work we began in the last Congress. This legislation, introduced by Senator LAUTENBERG and myself, requires schools located in radon high risk areas to test for radon. These high risk areas are being identified by EPA pursuant to the radon bill which I and other members of this

committee authored in the last Congress.

The legislation further provides a loan and/or grant program of $5 million for each of 5 years for schools which need to mitigate radon, and need financial assistance to do so. Although some mitigation work can be costly, most mitigation consists of adjustments to ventilation, installation of fans, and depressurizing and sealing a foundation. These techniques do not usually cost a great deal.

It is important that we take steps to protect our children from radon gas, which could be claiming as many as 16,000 lives per year. Radon has been identified by the Environmental Protection Agency as the largest single source of lung cancer other than smoking. I encourage my colleagues to support this important legislation.•

By Mr. DECONCINI:

S. 576. A bill to amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide on site day care facilities for dependents of their employees; to the Committee on Finance.

CREDIT FOR EMPLOYER EXPENSES FOR DAY CARE FACILITIES

• Mr. DECONCINI. Mr. President, momentum is growing in this country for child care that is safe, affordable, and available. Congress responded to this call by enacting the first national child care legislation since World War II. Despite Congress' landmark action, there is still more to be done.

It has been said, and rightly so: This Nation is "in the midst of a child care explosion." In 1950, 12 percent of America's mothers with children under 6 years of age were part of the work force. Since then, the number of working women with preschool children has more than quadrupled. Families no longer fit the traditional mold of a father breadwinner and mother homemaker. In fact, the traditional family only accounts for 11 percent of the population.

All our evidence indicates that our child care demand far exceeds supply. The most recent census statistics indicate that there are 9.4 million children under the age of 6 whose mothers are currently in the labor force. There are no comprehensive national data on the number, types, or quality of child day care facilities in the United States. But, as of June 1990, a children's defense fund survey found that there were 71,645 licensed child care centers operating in the United States. It is estimated that these facilities have the capacity of serving a total of 3.8 million children.

Not long ago, in a community near Chicago, 47 youngsters—half of them younger than 2—were discovered being cared for in a basement by only one adult. That program cost $25 a week—one-third of the cost of most child care in the community. The fact is, those children were in that child care situation because their parents could afford no better. When parents cannot afford adequate child care, children suffer and there will be some who will pay with their lives.

This Nation can do better. All of us must work together—parents, child advocates, the business community, and elected representatives. We must work together to give America's children a better chance at affordable, reliable and safe child care.

It's going to take many innovative and imaginative solutions. I believe that one of our greatest untapped resources is America's businesses. But for much of the Nation, employer sponsored child care assistance is now the exception rather than the rule. We are a country that has 6 million employers—44,000 of which have 100 or more employees. Of that number, about 4,000 provide some kind of child care support to their employees, mostly in the form of child care information and referral. Only about 1,300 corporations fund onsite or nearby child care facilities.

I think the role of Government is to improve the system so that businesses will come on board. Our current tax incentives for employer-assisted child care have just not stimulated the development of increased child care options for working families. This is especially true in the case of employer provided child care centers at the place of work. For the employer, starting up and operating an onsite facility can be very costly.

Onsite child care is good for families and good for businesses. Parents can visit their children at lunch or during coffee breaks. If they work later than usual, they know the children are right there, well taken care of. Businesses that pay attention to the family concerns of their employees are already realizing the rewards. Studies show that employees of such firms are more productive because of better morale, have less absenteeism and burnout, and far less job turnover. It is estimated that for every $1 spent on an onsite facility, there is a potential profit increase of $3 to $6 due to increased productivity.

I sponsored a bill, now law, which requires onsite child care centers at all Veterans' Administration facilities for the children of employees. As a result of my legislation, VA centers are required to provide space in existing facilities along with utilities and other equipment for child care. The legislation requires no or nominal cost to the individual VA facilities. I believe a program such as this could be a model for future child care facilities in both the public and private sectors.

Mr. President, in an effort to provide an incentive for employer onsite centers, I am today reintroducing a bill to provide tax credits to employers to help them establish child care centers at the work site. Specifically, my legislation would provide a tax credit of 50 percent, up to a limit of $150,000, for expenses related to the acquisition, construction, rehabilitation, or expansion of an onsite child care facility. The U.S. Government would recapture costs, on a reducing scale, if the facility does not operate for 10 years as a child care center. For example, if the facility remains open for only 5 years, the employer would be required to pay back 70 percent of the credits taken. Should the child care facility remain open for 6 years, the employer must pay back 55 percent of the credits taken.

In order for a child care facility to qualify for the tax credit, at least 30 percent of the children enrolled must be dependents of the company's employees. In addition, the center must be open to the children of all employees, regardless of income. And in the case of multiple employers, the facility must be located on the premises of one employer and within a reasonable distance from the premises of the other employers.

Under my legislation, any eligible employer may take the tax credit over a number of years until the credit's limit is reached, or until the facility ceases to operate in compliance with the State laws and regulations of a licensed day care center.

This bill emphasizes the need for more and properly equipped physical facilities. Finding the appropriate space is often the first step in providing child care services. My bill gives businesses a tax incentive to cross this hurdle.

Most parents are on their own when it comes to finding someone to look after their kids. For many, they must leave their babies in places they don't trust because there are no alternatives. The situation doesn't improve as the children age. There are more than a million children ages 5 to 14 who care for themselves after school—the so-called latchkey children. In my own State of Arizona, 9 percent of children between the ages of 5 and 14 with working parents come home from school each day to an empty house.

Parents form such a large part of the work force today that the child care dilemma will continue to demand national attention. The growing interest and involvement of employers in resolving these concerns needs to be actively encouraged and supported.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 576

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

SECTION 1. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CERTAIN ON-SITE DAY-CARE FACILITIES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45. EMPLOYER ON-SITE DAY-CARE FACILITY CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the employer on-site day-care facility credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified investment in property placed in service during such taxable year as part of a qualified day care facility.

"(b) LIMITATION.—The credit allowable under subsection (a) with respect to any qualified day-care facility shall not exceed $150,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED INVESTMENT.—The term 'qualified investment' means the amount paid or incurred to acquire, construct, rehabilitate, or expand property—

"(A) which is to be used as part of a qualified day-care facility, and

"(B) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable.

Such term includes only amounts properly chargeable to capital account.

"(2) QUALIFIED DAY-CARE FACILITY.—

"(A) IN GENERAL.—The term "qualified day-care facility' means a facility—

"(i) operated by an employer to provide dependent care assistance for enrollees, at least 30 percent of whom are dependents of employees of employers to which a credit under subsection (a) with respect to the facility is allowable,

"(ii) the principal use of which is to provide dependent care assistance described in clause (i),

"(iii) located on the premises of such employer,

"(iv) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a day-care facility, and

"(v) the use of which (or the eligibility to use) does not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

"(B) MULTIPLE EMPLOYERS.—With respect to a facility jointly operated by more than 1 employer, the term 'qualified day-care facility' shall include any facility located on the premises of 1 employer and within a reasonable distance from the premises of the other employers.

"(d) RECAPTURE OF CREDIT.—

"(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified day-care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

"(A) the applicable recapture percentage, and

"(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified on-site day-care expenses of the taxpayer with respect to such facility had been zero.

"(2) APPLICABLE RECAPTURE PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

"If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

"(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified day-care facility is placed in service by the taxpayer.

"(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection the term 'recapture event' means—

"(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified day-care facility.

"(B) CHANGE IN OWNERSHIP.—

"(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified day-care facility with respect to which the credit described in subsection (a) was allowable.

"(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

"(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified day-care facility by reason of a casualty loss to the extent such loss is restored by reconstruction of replacement within a reasonable period established by the Secretary.

"(e) SPECIAL ALLOCATION RULES.—For purposes of this section—

"(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly operating a qualified day-care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site day-care expenses giving rise to the credit.

"(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

"(f) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1996."

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "plus" at the end of paragraph (6),

(B) by striking out the period at the end of paragraph (7), and inserting in lieu thereof a comma and "plus", and

(C) by adding at the end thereof the following new paragraph:

"(8) the employer on-site day-care facility credit determined under section 45.".

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 45. Employer on-site day-care facility credit.".

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

By Mr. KERRY:

S. 577. A bill to amend the Securities Exchange Act of 1934 to permit members of national securities exchanges to effect certain transactions with respect to accounts for which such members exercise investment discretion; to the Committee on Banking, Housing, and Urban Affairs.

SECURITIES EXCHANGE ACT AMENDMENTS

Mr. KERRY. Mr. President, I am today introducing legislation that will amend the Securities Exchange Act of 1934 by removing the provision in section 11(a) that prohibits a broker-dealer from effecting orders on an exchange of which it is a member for managed accounts.

The proposed amendment would remove the so-called managed account prohibition in section 11(a)(1) of the Securities Exchange Act. This prohibition currently makes it unlawful for any member of a national securities exchange to effect any transaction on such exchange for an account with respect to which such member or an associated person thereof exercise investment discretion. The proposed amendment would leave intact the other prohibitions in section 11(a)(1) of the Securities Exchange Act.

The managed account prohibition in section 11(a)(1) was based on structural elements of the securities markets, which have change dramatically since 1975 when this prohibition was first adopted. In 1978, the Commission adopted rule 11a2–2(T) which removed most of the section 11(a)(1) impediments to an exchange member executing transactions for the accounts managed by such member or an affiliate thereof. Elimination of the remaining impediments would reduce the substantial costs currently incurred by exchange members in executing orders for managed accounts, without significantly changing the extent that money managers would use affiliated exchanged members to execute such orders.

This amendment is supported by a report of the Division of Market Regulation, with which the Commission concurs, subject to the Commission retaining authority to impose by rule two conditions currently in rule 11a2–2(T).

The proposed amendment gives the Commission authority to require that both conditions be met. First, an exchange member may be required by Commission rule to obtain written authorization to engage in the practice of effecting transactions on such exchange for an account managed by the member or an affiliate thereof. Second, an exchange member may be required by Commission rule to furnish the authorizing person with an annual statement disclosing the aggregate compensation received by the exchange member for effecting such transactions.

This amendment is not intended to alter the current fiduciary obligations of an investment adviser concerning affiliation with brokers. Under current law, the fiduciary obligations of an investment adviser do not require such an adviser to form a broker-dealer affiliate. Nor is this amendment intended to alter the current obligations of any fiduciary under the Employee Retirement Income Security Act of 1974 with respect to brokerage transactions.

Mr. President, this amendment is noncontroversial and I urge my colleagues to quickly enact it into law.

By Mr. PELL (by request):

S. 579. A bill to authorize appropriations for the Department of State to carry out its authorities and responsibilities in the conduct of foreign affairs during the fiscal years 1992 and 1993; to the Committee on Foreign Relations.

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993

• Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to authorize appropriations for the Department of State to carry out its authorities and responsibilities in the conduct of foreign affairs during the fiscal years 1991 and 1992, and for other purposes.

This proposed legislation has been requested by the Department of State, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the Assistant Secretary of State for Legislative Affairs, which was received on March 6, 1991, and a section-by-section analysis of the bill.

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

S. 579

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993.

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

TITLE I—THE DEPARTMENT OF STATE

PART A—AUTHORIZATION OF APPROPRIATIONS: ALLOCATIONS OF FUNDS: RESTRICTIONS

Sec. 101. Administration of Foreign Affairs.
Sec. 102. International Organizations and Conferences.
Sec. 103. International Commissions.
Sec. 104. Migration and Refugee Assistance.
Sec. 105. Other Programs.

PART B—DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES

Sec. 111. Chief of Mission.
Sec. 112. Authority of the Secretary of State.
Sec. 113. Capital Programs.
Sec. 114. Transfers and Reprogrammings.
Sec. 115. Foreign Affairs Administrative Support System.
Sec. 116. Defense Trade Controls Registration Fees.
Sec. 117. International Meetings.
Sec. 118. Model Language Posts.
Sec. 119. Child Care Facilities at Certain Posts Abroad.
Sec. 120. Foreign Service Institute Facilities.
Sec. 121. Availability of Funds.
Sec. 122. Advance Payments.

PART C—DIPLOMATIC RECIPROCITY AND SECURITY

Sec. 131. Occupancy of Facilities.
Sec. 132. Diplomatic Construction Program.
Sec. 133. Special Agents.

PART D—PERSONNEL

Sec. 141. Ambassadorial Appointments.
Sec. 142. Chief of Mission Salary.
Sec. 143. Prescriptive Relief Pending Completion of Grievance and/or Judicial Proceedings.
Sec. 144. Retirement Eligibility for Certain Federal Employees Who Transfer to International Organizations.
Sec. 145. Commissary Access.
Sec. 146. Storage of Personal Effects.
Sec. 147. Transportation of Remains.
Sec. 148. Amendments to Title 5.

PART E—MODIFICATIONS TO OTHER LAWS

Sec. 151. Danger Pay.
Sec. 152. Post Staffing.
Sec. 153. Travel Advisories.
Sec. 154. Post Openings and Closings.

PART F—INTERNATIONAL ORGANIZATIONS

Sec. 161. Contributions to the International Red Cross.
Sec. 162. Reform in Budget Decision-Making Procedures of the United Nations and its Specialized Agencies.
Sec. 163. Permanent International Association of Road Congresses.
Sec. 164. International Boundary and Water Commission.
Sec. 165. Report to Congress.

PART G—JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Sec. 171. Japan-United States Friendship Commission.

TITLE I—DEPARTMENT OF STATE

PART A—AUTHORIZATION OF APPROPRIATIONS; ALLOCATIONS OF FUNDS; RESTRICTIONS

SEC. 101. ADMINISTRATION OF FOREIGN AFFAIRS.

(a) DIPLOMATIC AND ONGOING OPERATIONS.—The following amounts are authorized to be appropriated for the Department of State under "Administration of Foreign Affairs" to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law (other than the diplomatic security program):

(1) SALARIES AND EXPENSES.—For "Salaries and Expenses", of the Department of State $1,749,744,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the Budget Enforcement Act of 1990 (P.L. 101-508) (hereafter "BEA").

(2) ACQUISITION AND MAINTENANCE OF BUILDINGS ABROAD.—For "Acquisition and Maintenance of Buildings Abroad," $570,000,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(3) REPRESENTATION ALLOWANCES.—For "Representation Allowances", $4,802,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(4) Emergencies in the Diplomatic and Consular Service. For "Emergencies in the Diplomatic and Consular Service, $8,000,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(5) Office of the Inspector General. For "Office of the Inspector General", $23,928,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with BEA.

(6) Payment to the American Institute in Taiwan. For "Payment to the American Institute in Taiwan", $13,784,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(b) DIPLOMATIC SECURITY PROGRAM.—In addition to amounts authorized to be appropriated by subsection (a), the following amounts are authorized to be appropriated under "Administration of Foreign Affairs" for the fiscal years 1992 and 1993 for the Department of State to carry out the diplomatic security program:

(1) Salaries and Expenses. For "Salaries and Expenses", $299,828,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(2) Protection of Foreign Missions and Officials. For "Protection of Foreign Missions and Officials", $9,464,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

SEC. 102. INTERNATIONAL ORGANIZATIONS AND CONFERENCES.

(a) ASSESSED CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS.—There are authorized to be appropriated for "Contributions to International Organizations", $1,120,541,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA, for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States with respect to international organizations and for other purposes authorized by law.

(b) CONTRIBUTIONS TO INTERNATIONAL PEACEKEEPING ACTIVITIES.—There are authorized to be appropriated for "Contributions to International Peacekeeping Activities". $201,292,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA, for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States with respect to inter-

national peacekeeping activities and for other purposes authorized by law.

(c) INTERNATIONAL CONFERENCES AND CONTINGENCIES.—(1) In addition to funds otherwise authorized to be appropriated for these purposes, there are authorized to be appropriated for "International Conferences and Contingencies", $5,500,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA, for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States with respect to international conferences and contingencies and for other purposes authorized by law.

SEC. 103. INTERNATIONAL COMMISSIONS.

The following amounts are authorized to be appropriated under "International Commissions" for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of foreign affairs of the United States and for other purposes authorized by law:

(a) INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO.—For "International Boundary and Water Commission, United States and Mexico"—

(1) for "Salaries and Expenses" for the fiscal year 1992, $10,900,000, and for the fiscal year 1993, consistent with the BEA, such sums as may be necessary; and

(2) for "Construction" for the fiscal year 1992, $10,525,000, and for the fiscal year 1993, consistent with the BEA, such sums as may be necessary.

(b) INTERNATIONAL BOUNDARY COMMISSION, UNITED STATES AND CANADA.—For "International Boundary Commission, United States and Canada", $768,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(c) INTERNATIONAL JOINT COMMISSION.—For "International Joint Commission", $3,732,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(d) INTERNATIONAL FISHERIES COMMISSIONS.—For "International Fisheries Commissions", $12,147,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

SEC. 104. MIGRATION AND REFUGEE ASSISTANCE.

AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for "Migration and Refugee Assistance"—for authorized activities, $490,557,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

SEC. 105. OTHER PROGRAMS.

The following amounts are authorized to be appropriated for the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States and for other purposes authorized by law:

(a) UNITED STATES BILATERAL SCIENCE AND TECHNOLOGY AGREEMENTS.—For "United States Bilateral Science and Technology Agreements", $2,250,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(b) SOVIET-EAST EUROPEAN RESEARCH AND TRAINING.—For "Soviet-East European Research and Training", $4,784,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

(c) ASIA FOUNDATION.—For the Asia Foundation, $15,367,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993, consistent with the BEA.

PART B—DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES

SEC. 111. CHIEF OF MISSION.

Section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) is amended as follows:

(a) at the end of subsection (b) add the following new subsection:

"(c) All non-executive branch employees or representatives of the U.S. government in a foreign country shall as requested keep the chief of mission to that country fully and currently informed with respect to all their activities and operations conducted in that country. It is the responsibility of all parties to refer disagreements concerning such activities and operations which cannot promptly be resolved to the Secretary of State, who shall ensure that necessary steps are taken."

SEC. 112. AUTHORITY OF THE SECRETARY OF STATE.

(a) The Congress finds that—

(1) The organization of the Department of State should, to the maximum extent possible, reflect the primary responsibility of the Secretary of State under the President for the conduct of the Nation's foreign relations;

(2) As a consequence, unless compelling considerations so require, statutory authorities should be vested in the Secretary, rather than in officials subordinate to him;

(3) In recognition of the approrpiate oversight role of the Congress, abolishment or creation of units at the bureau level shall be notified to the Congress in accordance with relevant reprogramming requirements; and

(4) The Congress and the Executive should consult closely and frequently in pursuit of the shared purpose of organizing the Department to respond most effectively to evolving demands and requirements.

(b) SAVINGS CLAUSE.—Existing Executive Orders and regulations with respect to organizations an officials whose status is modified in this section shall remain in effect until Executive orders and regulations necessary to implement this section, as required, have become effective.

(c) STATUTORY SIMPLIFICATION.—

(1) The Act of May 26, 1949, as amended (22 U.S.C. 2652) is further amended—

(A) In the title by striking "Under Secretary of State for Political Affairs; Under Secretary of State for Economic and Agricultural Affairs; Under Secretary of State for Management" and inserting in its place "Under Secretaries of State"; and

(B) In the text by striking "Under Secretary of State for Political Affairs; Under Secretary of State for Economic and Agricultural Affairs; Under Secretary of State for Management and fifteen" and inserting in its place "four Under Secretaries of State and seventeen"; and

(2) The Foreign Assistance Authorization Act of 1961, as amended is further amended:

(A) In section 116(c) (22 U.S.C. 2151n.) by striking "Assistant Secretary for Human Rights and Humanitarian Affairs" and inserting in its place "Secretary of State";

(B) In sections 502B(b), 502B(c)(1) (22 U.S.C. 2304) and 505(g)(4)(A) (22 U.S.C. 2314) by striking "prepared with the assistance of the Assistant Secretary of State for Human Rights and Humanitarian Affairs," wherever it appears; and

(C) By repealing Section 624(f) * * *.

(3) The Arms Export Control Act is amended in section 5(d)(1) (22 U.S.C. 2755) by striking "Assistant Secretary of State for Human Rights and Humanitarian Affairs" and inserting in its place "Secretary of State".

(4) Section 104 of the Immigration and Nationality Act (8 U.S.C. 1104) is amended by—

(A) Striking "; Bureau of Consular Affairs" in the title;

(B) Striking "(a)" at the beginning of subsection 104(a); and

(C) Repealing subsections 104(b) through 104(e).

(5) Section 9 of the Department of State Appropriations Authorization Act of 1973 (Public Law 93-126) is repealed.

(6) Section 35 of the Department of State Basic Authorities Act of 1956 (22 U.S.C. 2707) is amended in subsection (b) by

(A) In the first paragraph by striking everything after the word "shall" the first time it appears;

(B) In subsection (b)(1) by striking the phrase "with the bureaus and offices of the Department of State and"; and

(C) In subsection (b)(2) by striking "agency and".

(d) CONFORMING CHANGES.—

(1) Section 5314, Title 5 of the United States Code, is amended by striking "Under Secretary of State for Political Affairs and Under Secretary of State for Economic Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management" and inserting in its place "Under Secretaries of State (4)".

(2) Section 5315, Title 5 of the United States Code, is amended by

(A) striking "Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State." and "Assistant Secretary for International Narcotics Matters, Department of State."; and

(B) striking "(15)" after "Assistant Secretaries of State" and inserting in its place "(17)".

SEC. 113. CAPITAL PROGRAMS.

The Foreign Service Buildings Act, 1926, is amended as follows:

(a) in section 9 (22 U.S.C. 300) by adding the following new subsections d and e:

"(d) MULTI-YEAR CONTRACTING FOR MOSCOW.—(1) For the purposes of this subsection: (1) the term "multiyear contract" means a contract in effect for a period not to exceed five years; and (2) the term "appropriations" is used as defined in 31 United States Code, Sec. 1511.

"(2) The Secretary of State may enter into contracts for the acquisition of property and construction of diplomatic facilities in Moscow, as authorized by this Act, on a multiyear basis when appropriations are available and adequate for fixed obligations that are required for—

"(A) total payment that would arise under the full term of the contract; or

"(B) payments for the first fiscal year during which the contract is in effect, plus the full amount of estimated cancellation costs, if any; and the Secretary of State determines that—

"(i) such a contract will serve the best interests of the Government by—

"(a) achieving economies in administration, performance, and operation;

"(b) increasing quality of performance by or service from the contractor; or

"(c) encouraging effective competition; and

"(ii) such a contract will not inhibit small business concerns from submitting a bid or proposal for such contract.

"(3) A multiyear contract authorized by this section shall include—

"(A) a provision that the performance under the contract during the second or any subsequent fiscal year included in the con-

tract period is contingent on the availability of funds in such year, if funds have not been previously appropriated to cover total payments under the full term of the contract; and

"(B) a provision for the payment of a reasonable cancellation charge, if any, to the contractor if the contract is cancelled pursuant to a provision described in clause (A).

"(4) If funds are not appropriated or otherwise available, as determined by the Secretary of State, during the second or subsequent fiscal year included in the contract period, performance under said contract may be cancelled by the U.S. Government. Any cost of the cancellation of performance under said contract may be paid from funds available within the Foreign Service Buildings Fund.

"(5) Nothing in this section is intended to modify or affect any other provision of law which authorizes multiyear contracting."

"(e) ADVANCE PAYMENTS FOR LONG-TERM LEASES AND LEASE/PURCHASE.—

Notwithstanding any other provision of law, the Department may make advance payments for long-term leases and lease-purchase agreements, upon a determination by the Secretary of State or his designee in each specific case that such advance payments will serve the interest of carrying out the purposes of the Foreign Service Buildings Act, 1976."

(b) EXEMPTION OF CONTRACTS FROM COMPETITION.—In section 6 (22 U.S.C. 294) by striking "The contracts for all work of construction, alteration, and repair under" and inserting in its place "Contracts required to achieve" in the second sentence.

(c) APPROVAL OF LEASES.—In Section 10 (22 U.S.C. 301) by striking "$25,000" and inserting in its place "an amount to be established by regulation by the Secretary of State".

SEC. 114. TRANSFERS AND REPROGRAMMINGS.

(a) Section 24 of the State Department Basic Authorities Act (22 U.S.C. 2696) is amended

(1) by renumbering subsections (b)(4)—(b)(6) as (b)(5—(b)(7) and by inserting as new subsection (b)(4):

"(b)(4) No later than the end of the fifth fiscal year following the fiscal year for which appropriations for any account under the heading 'Administration of Foreign Affairs' have been made available to the Department of State, unobligated balances for such appropriations provided for fiscal year 1987 and thereafter may be transferred into and merged with the Buying Power Maintenance account, except that the balance of the Buying Power Maintenance account shall not exceed $100 million as the result of any such transfer."; and

(2) in subsection (d) by striking the words "the 'Administration of Foreign Affairs'; account, the 'International Organizations and Conferences' accounts, the 'International Commissions' account, or the 'Migration and Refugee Assistance'" and inserting in their place "any"; and by striking the word "such" wherever it appears; and

(3) by inserting the following new subsection (f):

"(f) Funds appropriated for the Department of State in any appropriations account funded in the Department of State Appropriations Act for a given fiscal year may be transferred to any other such appropriations account. No such appropriations account may be increased through such a transfer by more than 35 percent of the amount specifically appropriated for that account in the relevant fiscal year, except that neither the 'Salaries and Expenses' account nor the 'Acquisition of Foreign Buildings Abroad' account may be increased by more than 10 percent. Any transfer made pursuant to this subsection shall be treated as a reprogramming of funds under section 34 of the State Department Basic Authorities Act of 1956 (22 U.S.C 2706) and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section."

(b) Subsection 401(c) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4851) is hereby repealed.

(c) Section 34 of the State Department Basic Authorities Act (22 U.S.C. 2706) is amended

(1) in subsection (a)(7) by striking "$250,000" and inserting in its place "$500,000"; and

(2) by adding new subsections (c) and (d) as follows:

"(c) Notwithstanding any other provision of law, funds appropriated to the Department of State may be obligated and expended without prior notification to Congress in emergency situations, as determined by the Secretary of State. In case of any such determination, notification to the Congress, or the appropriate congressional committees, shall be provided as early as practicable, but in no event later than three days after taking such obligation or expenditure. Any notification provided pursuant to this subsection shall contain an explanation of the circumstances necessitating the use of the authority of this subsection.

"(d) Notwithstanding any other provision of law, the Secretary of State may obligate and expend funds in the Foreign Service Buildings Fund, including amounts appropriated under the heading 'Acquisition and Maintenance of Buildings Abroad,' without prior notification to Congress so long as—

"(1) total reprogramming actions taken under this discretionary authority do not exceed fifteen percent of funds available in that Fund for the relevant fiscal year;

"(2) no new programs or capital program projects are undertaken which have not been previously presented to Congress; and

"(3) the Secretary reports on a quarterly basis to the Congress all such reprogramming activities, detailing the circumstances and reasons for effecting such actions.

SEC. 115. FOREIGN AFFAIRS ADMINISTRATIVE SUPPORT SYSTEM.

Section 23 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2695) is amended by striking everything after the word "service" the second time it appears in the last sentence and by inserting the following new sentence at the end thereof:

"Any Federal agency obtaining administrative support services from the Department of State or another agency pursuant to such agreement on a reimbursable basis shall make full and complete payment for the services so provided through advance of funds or reimbursement."

SEC. 116. DEFENSE TRADE CONTROLS REGISTRATION FEES.

Section 45 of the State Department Basic Authorities Act is amended (a) in the title and in subsection (a) by striking "Munitions Control" and "munitions control" wherever it appears and inserting in its place "Defense Trade Controls" or "defense trade controls" as appropriate; and (b) in subsection (a) by striking "$500,000" and inserting in its place"$700,000".

SEC. 117. INTERNATIONAL MEETINGS.

The Department of State Basic Authorities Act of 1956 is amended by renumbering current section 48 as 49 and adding a new section 48 as follows:

"SEC. 48. Whenever the United States Government serves as the host for an international meeting or conference in the United States, the Secretary of State is authorized to pay expenses of such event, including but not limited to expenses of rental of quarters by contract or otherwise and personal services without regard to laws governing employment and compensation in the Federal Civil Service, and to credit transfers of funds or reimbursements for such expenses received from other participants in the meeting or conference to the appropriate appropriation account of the Department of State which is currently available at the time of receipt."

SEC. 118. MODEL LANGUAGE POSTS.

Section 161 of Public Law 101-246 * * * is hereby repealed.

SEC. 119. CHILD CARE FACILITIES AT CERTAIN POSTS ABROAD.

Section 31(e) of the State Department Basic Authorities Act is amended by striking "For the fiscal years 1990 and 1991" and inserting in its place "For the fiscal years 1992 and 1993".

SEC. 120. FOREIGN SERVICE INSTITUTE FACILITIES.

Section 123(c)(2) Public Law 99-93 (22 U.S.C. 4021 note) is amended by striking "50,000,000" and inserting in its place "70,000,000".

SEC. 121. AVAILABILITY OF FUNDS.

Section 2 of the Department of State Basic Authorities Act of 1956 (22 U.S.C. 2669) is amended

(a) in subsection (j) by striking "and'"

(b) in subsection (k) by striking the period and inserting "; " in its place; and

(c) by adding the following new subsections "(l)" and "(m)"

"(l) pay obligations arising under international agreements, conventions and binational contracts to the extent otherwise authorized by law, and

"(m) purchase special purpose passenger motor vehicles without regard to any price limitation * * * by law."

SEC. 122. ADVANCE PAYMENTS.

Section 3 of the Department of State Basic Authorities Act of 1956 (22 U.S.C. 2670) is amended

(a) in subsection (j) by striking "and"'

(b) in subsection (k) by striking the period and inserting "; and" in its place; and

(c) by adding the following new subsection "(l)"

"(l) make payments in advance of the United States share of necessary expenses for international fisheries commissions, pursuant to 31 U.S.C. 3324."

PART C—DIPLOMATIC RECIPROCITY AND SECURITY

SEC. 131. OCCUPANCY OF FACILITIES.

(a) Section 304 of Public Law 100-202 is amended by striking "building" and inserting in its place "facilities" and by striking "facility" and inserting in its place "principal chancery building";

(b) Section 154(a) of Public Law 99-93 is amended by striking "building" and inserting in its place "facilities" and by striking "facility" and in inserting in its place "principal chancery building"; and

(c) Paragraph (a) under Department of State, "Acquisition Operation and Maintenance of Buildings Abroad" in Public Law 99-88 is amended by striking "building" and inserting in its place "facilities" and by "facilities" and inserting in its place "principal chancery building".

SEC. 132. DIPLOMATIC CONSTRUCTION PROGRAM.

Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4852) is amended

(a) in subsection (a)(1) by striking "$5,000,000" and inserting in its place "$10,000,000;

(b) in subsection (a)(2) to read:

"(2) bid on a technical security project, unless the project involves low-level technology, as determined by the Assistant Secretary for Diplomatic Security."

SEC. 133. SPECIAL AGENTS.

Section 37(a) of the State Department Basic Authorities Act (22 U.S.C. 2709) is amended by striking subsection (a)(5) and by inserting in its place:

"(a)(5) make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony."

PART D—PERSONNEL

SEC. 141. AMBASSADORIAL APPOINTMENTS.

Section 302 of the Foreign Service Act of 1980 (22 U.S.C. 3942) is amended by inserting "as an ambassador," after "ambassador at large," in subsection 302(a)(1).

SEC. 142. CHIEF OF MISSION SALARY.

(a) Section 302(b) of the Foreign Service Act of 1980 (22 U.S.C. 3942(b)) is amended by striking "shall receive the salary" and all that follows and inserting in its place "may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President."

(b) Section 401(a) of the Foreign Service Act of 1980 (22 U.S.C. 3961(a)) is amended by:

(1) inserting at the beginning thereof "Except as provided in section 302(b),"; and

(2) striking everything after "level II" the second time it appears and inserting in its place "level I".

SEC. 143. PRESCRIPTIVE RELIEF PENDING COMPLETION OF GRIEVANCE AND/OR JUDICIAL PROCEEDINGS.

(a) The Foreign Service Act of 1980 is amended in section 1106(8) (22 U.S.C. 4136) by (1) striking the phrase "the involuntary separation of the grievant," in the first sentence and inserting "other than separation for cause" under section 610 after the phrase "disciplinary action against the grievant" and (2) adding the following new sentence at the end thereof "Nothing in this section shall be construed to affect in any way the Board's authority in appropriate cases to order the reinstatement of a member with back pay in accordance with Section 1107(b)(4)."

(b) Subsection 586(c) of Public Law 101-167 is hereby repealed.

SEC. 144. RETIREMENT ELIGIBILITY FOR CERTAIN FEDERAL EMPLOYEES WHO TRANSFER TO INTERNATIONAL ORGANIZATIONS.

(a) Section 8331(1) of title 5, United States Code, is amended—

(1) by deleting the word "and" at the end of subparagraph (K);

(2) by adding the word "and" after the semicolon at the end of subparagraph (L); and

(3) by adding after subparagraph (L) the following:

"(M) an individual who is employed by an international organization pursuant to section 3582 of this title and who, from time of transfer to such employment from employment covered by this subchapter, has currently deposited employee deductions required by this subchapter;".

(b) Section 8701(a) of title 5, United States Code, is amended:

(1) by deleting the word "and" at the end of paragraph (9);

(2) by adding the word "and" after the semicolon at the end of paragraph (10); and

(3) by adding after paragraph 10 the following:

"(11) an individual who is employed by an international organization pursuant to section * * * from time of transfer to such employment from employment covered by this chapter, has currently deposited employee deductions required by this chapter;".

(c) Section 8901(1) of this title 5, United States Code, is amended:

(1) by deleting the word "and" at the end of subparagraph (H);

(2) by adding the word "and" after the semicolon at the end of subparagraph (I); and

(3) by adding after subparagraph (I) the following:

"(J) an individual who is employed by an international organization pursuant to section 3582 of this title and who, from time of transfer to such employment from employment covered by this chapter, has currently deposited employee deductions required by this chapter;".

(d) Section 8401 of title 5, United States Code, is amended in paragraph (11):

(1) by striking "(J) or (K)" in subparagraph (A) and inserting in lieu thereof "(J), (K) or (M)"; and

(2) by inserting after "Internal Revenue Code of 1954" the phrase "or is self-employment for purposes of section 211(c)(2)(C)) of the Social Security Act (42 U.S.C. 411(c)(2)(C) and section 1402 (c)(2)(C) of title 26,".

(e) Section 8440 of title 5, United States Code, is amended:

(1) in subsection (a)(3), by striking "merely because" and inserting in place thereof "merely because (A)" and by adding at the end of the subsection ", or (B) having made such election, the employee subsequently transfers to employment with an international organization under conditions specified in section 3582 of this title entitling the employee to continue participation in a retirement system for Federal employees, including submission of employee contributions to the Thrift Savings Fund in accordance with subsection 3582(d)(2).";" and

(2) in subsection (c), by inserting after "not be included" the words "either (1)" and by adding at the end of the subsection ", or (2) for an employee who transfers to employment with an international organization pursuant to section 3582 of this title, as 'net earnings from self-employment' consistent with section 211(c)(2)(C) of the Social Security Act (42 U.S.C. 411(c)(2)(C)) or section 1402(c)(2)(C) of the Internal Revenue Code of 1954.".

(f) Section 853(a) of the Foreign Service Act of 1980 (22 U.S.C. 4071b(a)) is amended by inserting after "chapter 21 of title 26," the phrase "or is self-employment for purposes of section 211(c)(2)(C) of the Social Security Act (42 U.S.C. 411(c)(2)(C)) and section 1402 (c)(2)(C) of title 26,".

(g) Section 1402(c)(2) of title 26, United States Code, is amended by inserting after the comma at the end of clause (C): "and service described in section 3121(b)(15) performed outside the United States by a citizen of the United States who, in accordance with section 3582 of title 5, transferred from prior service in an agency or instrumentality of the United States Government which was employment for purposes of section 3121(b) of this title, with that agency head's consent, and who accordingly is entitled to reemployment with the former employing Government agency,".

(h) Section 7701(j) of title 26, United States Code, is amended:

(1) in subparagraph (j)(1)(C), by striking "merely because" and inserting in place thereof "merely because (i)" and by adding at the end of the subparagraph ", or (ii) having made such election, the employee subsequently transfers to employment with an international organization under conditions specified in section 3582 of this title entitling the employee to continue participation in a retirement system for Federal employees, including submission of employee contributions to the Thrift Savings fund in accordance with subsection 3582(d)(2) of title 5."; and

(2) in paragraph (j)(3), by inserting after "not be included" the words "either (A)" and by adding at the end of the paragraph ", or (B) for an employee who transfers to employment with an international organization pursuant to section 3582 of title 5, as 'net earnings from self-employment' consistent with section 211(c)(2)(C) of the Social Security Act (42 U.S.C. 411(c)(2)(C)) or section 1402(c)(2)(C) of this title.".

(i) Section 211(c)(2) of the Social Security Act (42 U.S.C. 411(c)(2)) is amended by inserting after the comma at the end of clause (C): "and service described in section 210(a)(15) of this Act performed outside the United States by a citizen of the United States who, in accordance with section 3582 of title 5, United States Code, transferred from prior service in an agency or instrumentality of the United States Government which was employment for purposes of section 210(a) of this Act, with that agency head's consent, and who accordingly is entitled to reemployment with the former employing Government agency,".

(j) Section 3582 of title 5, United States Code, is amended—

(1) in subsection (a)(1) by inserting, after "fund or depository" and before the first semicolon, a parenthesis to read as follows: "(in addition to self-employment taxes payable pursuant to section 1402(c)(2)(C) of title 26, if an employee's service prior to a transfer under this section was employment for purposes of title II of the Social Security Act)"; and

(2) in subsection (d) by redesignating the existing subsection as "(d)(1)" and by adding a new paragraph at the end to read as follows:

"(2) Any employee contributions authorized to be made to the Thrift Savings Fund pursuant to an employee election under section 8351 or 8432 of this title shall in the case of an employee entitled to continue such retirement coverage under subsection (a) of this section be deemed to qualify for preferential tax treatment in accordance with section 8440 of this title, as long as such contributions are submitted on a current basis to the agency from which the employee is transferred directly by the respective international organization through a salary reduction process."

(k) EFFECTIVE DATES.—(1) Subsections (a), (b), and (c) of this section are effective in the case of any Federal employee who transfers

to an international organization on and after October 1, 1988.

(2) Subsections (d) through (j) of this section are effective in the case of any Federal employee who transfers to an international organization on or after January 1, 1987, notwithstanding section 205(c)(5)F) of the Social Security Act (42 U.S.C. 405(c)(5)(F)).

SEC. 145. COMMISSARY ACCESS.

Section 31(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2684(c)) is amended in the first sentence by adding at the end thereof:

", and, where determined by the Secretary to be appropriate in light of exceptional circumstances, to American citizens hired from outside the host country to serve as teaching staff for such dependents abroad."

SEC. 146. STORAGE OF PERSONAL EFFECTS.

Subsection 901(12) of the Foreign Service Act of 1980 (22 U.S.C. 4081(12)) is amended as follows:

(a) in paragraph (B) by adding ", except that in extraordinary circumstances the Secretary may extend this period for up to an additional 3 months" immediately before the semicolon; and

(b) in paragraph (C) by adding "except that in extraordinary circumstances the Secretary may extend this period for up to an additional 3 months" immediately before the semicolon.

SEC. 147. TRANSPORTATION OF REMAINS.

Section 901(10) of the Foreign Service Act of 1980 (22 U.S.C. 4081(10) is amended by inserting at the end "or, if death occurs in the United States, transporting of the remains to the designated home in the United States or to a place not more distant;"

SEC. 148. AMENDMENTS TO TITLE 5.

(a) DURATION OF PAYMENTS: RATES: ACTIVE SERVICE PERIOD. Section 5523(a) is amended in subparagraph (1)(A) by inserting "(or that of the employee's dependents or immediate family, as the case may be)" after "departure" and by striking "and" at the end of the subparagraph and inserting in its place "or".

(b) LUMP SUM PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE ON SEPARATION.—

(1) Section 5551(a) is amended by adding after the word "pay" in the second sentence, "not including differentials and allowances under sections 5925 and 5928".

(2) The amendment made by subsection (1) shall apply for service as part of a tour of duty or extension thereof commencing on or after the effective date of this amending provision.

(c) GENERAL PROVISIONS.—Section 5922 is amended by adding at the end thereof the following new subsections (d) and (e):

"(d) When a quarters allowance or allowance related to education under this subchapter, or quarters furnished in Government-owned or controlled buildings under section 5912, would be furnished to an employee but for the death of the employee, such allowances or quarters may be furnished or continued for the purpose of allowing any child of the employee to complete the current school year at post or away from post notwithstanding the employee's death.

"(e) When an allowance related to education away from post under this subchapter would be authorized to an employee but for the evacuation/authorized departure status of the post, such an allowance may be furnished or continued for the purpose of allowing dependent child(ren) of such employee to complete the current school year."

(d) QUARTERS ALLOWANCE.—Section 5923, relating to quarters allowance, is amended in paragraph (1)—

(1) by striking the word "lodging" and inserting in its place "subsistence"; and by inserting "including meals and laundry expenses" after "quarters" the first time it appears;

(2) in subparagraph (1)(A), by striking "3 months" and inserting "90 days" in its place;

(3) in subparagraph (1)(B), by striking "1 month" and inserting "30 days" in its place; and

(4) by adding at the end as a new subsection "(C)":

"(C) The allowance under subsections (A) and (B) may be extended for up to an additional 60 days if the head of agency concerned or his designee determines that there are compelling reasons beyond the control of the employee for the continued occupancy of temporary quarters."

(e) COST-OF-LIVING ALLOWANCES.—

(1) Section 5924(1), relating to post allowances, is amended by adding at the close thereof ", except that employees receiving the temporary subsistence allowance under section 5923(1) of this title are ineligible for receipt of a post allowance under this paragraph."

(2) Section 5924(2) is amended—

(A) by inserting "subsistence and other relocation" after "reasonable" and inserting "(including unavoidable lease penalties)" after "expenses"; and

(B) in subparagraph (A), by deleting "the Commonwealth of Puerto Rico" and inserting "the Commonwealths of the Northern Marianas Islands or Puerto Rico," in its place; and

(C) in subparagraph (B), by striking "between assignments to posts in foreign areas" and inserting "after the employee agrees in writing to remain in Government service for 12 months after transfer, unless separated for reasons beyond the control of the employee that are acceptable to the agency concerned" in lieu thereof.

(f) EDUCATION ALLOWANCES.—Section 5924(4) is amended

(1) in the introduction, by inserting "or, to the extent education away from post is involved, official assignment to serve in such area or areas," after "dependents,";

(2) in subparagraph (A), by inserting before "kindergarten", "pre-school for children with disabilities ages three to five years,"; and

(3) in the first line of subparagraph (B) by striking "undergraduate college" each time it appears and inserting in its place "accredited post-secondary (but not graduate or post-graduate) educational institution".

(g) VOLUNTARY TRANSFER OF LEAVE.—Sections 6331(1) and 6361(1) are amended by adding "and Foreign Service National employees of the United States Government abroad" after "6301(2)" each time it appears.

PART E—MODIFICATIONS TO OTHER LAWS

SEC. 151. DANGER PAY.

Section 151 of Public Law 101-246 is repealed.

SEC. 152. POST STAFFING.

(a) Section 801 of Public Law 100-204 concerning * * * is repealed;

(b) Section 1002 of Public Law 101-246 concerning Commerce officers at USEC is repealed;

(c) The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) is amended by striking section 2201; and

(d) The Foreign Operations, Export Financing and Related Programs Appropriations Act, Fiscal Year 1991 (Public Law 101-513), is amended in the paragraph "Operating Expenses of the Agency for International Development" by inserting a "." after "$435,000,000" and striking everything thereafter.

SEC. 153. TRAVEL ADVISORIES.

Section 134 of Public Law 99-93 concerning travel advisories for Jalesco, Mexico is repealed.

SEC. 154. POST OPENINGS AND CLOSINGS.

Sections 122 and 204 of Public Law 100-204 (22 U.S.C. 2656 note and 1461 note) are repealed.

PART F—INTERNATIONAL ORGANIZATIONS

SEC. 161. CONTRIBUTIONS TO THE INTERNATIONAL RED CROSS.

Section 109 of Public Law 99-93 is amended by striking subsection (b). Section 742 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204) is amended by striking subsection (a).

SEC. 162. REFORM IN BUDGET DECISIONMAKING PROCEDURES OF THE UNITED NATIONS AND ITS SPECIALIZED AGENCIES.

(a) For assessed contributions authorized to be appropriated by section 102 of this Act, the President may withhold 20 percent of the funds appropriated for the United States assessed contribution to the United Nations or to any of its specialized agencies for any calendar year if the United Nations or any such agency has failed to implement or to continue to implement consensus-based decision-making procedures on budgetary matters which assure that sufficient attention is paid to the views of the United States and other member states who are major financial contributors to such assessed budgets.

(b) Subject to the availability of appropriations, payment of assessed contributions for prior years may made to the United Nations or any of its specialized agencies notwithstanding subsection (a) of this section, section 405 of Public Law 101-246 and section 143 of Public Law 99-93, as amended, if such payment would further United States interests in that organization.

SEC. 163. PERMANENT INTERNATIONAL ASSOCIATION OF ROAD CONGRESSES.

The Act of June 18, 1926 (22 U.S.C. 269) is amended by striking "not exceeding $3,000 per annum" and inserting in its place "such sums as may be necessary for each fiscal year".

SEC. 164. INTERNATIONAL BOUNDARY AND WATER COMMISSION.

Section 103 of the Act of September 13, 1950, as amended (22 U.S.C. 277d-3) is amended after "guard purposes;" by inserting "official entertainment and other representation expenses within the United States for the United States section;".

SEC. 165. REPORT TO CONGRESS.

Section 701(b) of Public Law 100-204 (22 U.S.C. 287e note) is hereby repealed.

PART G—JAPAN-UNITED STATES FRIENDSHIP COMMISSION

SEC. 171. JAPAN-UNITED STATES FRIENDSHIP COMMISSION.

Section 6 of the Japan-United States Friendship Act, as amended, (22 U.S.C. 2905) is amended in paragraph 4 by inserting "or for up to 50 percent of administrative expenses in the United States" after "Japan".

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993—SECTION-BY-SECTION ANALYSIS

Section 1. Short title and table of contents.

This section provides the short title and table of contents of this legislation.

PART A—AUTHORIZATION OF APPROPRIATIONS; ALLOCATIONS OF FUNDS; RESTRICTIONS

Sec. 101. Administration of Foreign Affairs.

This section authorizes appropriations under the heading "Administration of Foreign Affairs" for fiscal years 1992 and 1993. It authorizes the necessary funds for the salaries, expenses and allowances of the officers and employees of the Department, both in the United States and abroad and the expenses of the Office of the Inspector General. It includes funds for executive direction and policy formulation, conduct of diplomatic relations with foreign governments and international organizations, acquisition and maintenance of office space and living quarters for United States missions abroad, including office space in Moscow, provision of security for those operations, and domestic public information activities. The amount of authorization requested for "Acquisition and Maintenance of Buildings Abroad" reflects the full amount required to support the Administration's appropriations request. Alternatively, we believe that it would be appropriate to use approximately $122 million of existing authorization provided in section 401(a)(1)(B) of P.L. 99-399. If this authorization is used, the amount of authorization requested for foreign buildings in this section can be reduced by a like amount. This section also authorizes funds for such activities as relief and repatriation loans to United States citizens abroad and for other emergencies of the Department; and authorizes appropriations for protection of foreign missions and officials, and for the American Institute in Taiwan.

For 1993 sums are authorized in amounts as may be necessary, consistent with the provisions of the Budget Enforcement Act of 1990 (P.L. 101-508).

Sec. 102. International organizations and conferences.

This section authorizes appropriations for fiscal years 1992 and 1993 under the heading "International Organizations and Conferences." It authorizes the necessary funds for United States contributions of its assessed share of the expenses of the United Nations and other international organizations of which the United States is a member, including arrearages from prior year contributions. In addition, provision is made for funding certain aspects of official United States Government participation in regularly scheduled or planned multilateral intergovernmental conferences, meetings and related activities, and for contributions to international peacekeeping activities in accordance with multilateral agreements.

For 1993 sums are authorized in amounts as may be necessary, consistent with the provisions of the Budget Enforcement Act of 1990 (P.L. 101-508).

Sec. 103. International Commissions.

This section authorizes appropriations for fiscal years 1992 and 1993 under the heading "International Commissions." It authorizes funds necessary to enable the United States to meet its obligations as a participant in international commissions such as the American Sections of international commissions dealing with American boundaries and related matters with Canada and Mexico, and international fisheries commissions.

For 1993 sums are authorized in amounts as may be necessary, consistent with the provisions of the Budget Enforcement Act of 1990 (P.L. 101-508).

Sec. 104. Migration and Refugee Assistance.

This section authorizes appropriations for fiscal years 1992 and 1993 under the heading "Migration and Refugee Assistance" to enable the Secretary of State to provide assistance and make contributions for migrants and refugees, including contributions to international organizations such as the United Nations High Commissioner for Refugees and the International Committee for the Red Cross, through private voluntary agencies, governments, and bilateral assistance, as authorized by law.

For 1993 sums are authorized in amounts as may be necessary, consistent with the provisions of the Budget Enforcement Act of 1990 (P.L. 101-508).

Sec. 105. Other Programs.

This section authorizes appropriations for "Other Programs" for fiscal years 1992 and 1993. It authorizes funds for United States bilateral science and technology agreements, in addition to $2,750,000 authorized by section 403 of the Support for East European Democracy Act of 1989 (Public Law 101-179), for Soviet-East European research and for the Asia Foundation.

For 1993 sums are authorized in amounts as may be necessary, consistent with the provisions of the Budget Enforcement Act of 1990 (P.L. 101-508).

PART B—DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES

Sec. 111. Chief of Mission.

This section reaffirms the responsibility of the Chief of Mission for the overall operation of U.S. diplomatic missions abroad as the representative of the President, and the role of the Secretary of State in carrying out the foreign policy of the President and providing for security of the Mission. New subsection (c) to section 207 of the Foreign Service Act of 1980 provides that all non-executive branch governmental representatives in a foreign country are to keep the Chief of Mission informed of their activities and operations and to appeal any disagreements with the Chief of Mission to the Secretary of State.

Sec. 112. Authority of the Secretary of State.

Sec. 112(a), (b). Organizing Principles, Savings Clause.

Subsection (a) sets forth overall organizing principles for the Department of State. Included in the organizing principles are the following: 1) Departmental organization should reflect the primary responsibility of the Secretary, under the President, for the conduct of foreign policy; 2) statutory authority should be vested in the Secretary, rather than in subordinate officials; 3) Congress should be notified of major organizational changes in accord with reprogramming procedures; and 4) the Congress and the Executive should consult closely and frequently to maximize the organizational effectiveness of the Department. Subsection (b) is a savings clause.

Sec. 112(c). Statutory Simplification.

Changes made by this subsection eliminate statutory mandates for particular Department officials, bureaus, and offices, thus vesting the authorities in the Secretary of State. The Secretary will then delegate the authorities and reestablish entities, as appropriate.

Subsection (c)(1) amends the title and the text of the Act of May, 26, 1949, as amended, by striking the specific statutory mandates for the Under Secretaries for Political Affairs, Economic and Agricultural Affairs, and Management. (This is not necessary for the Under Secretary for Security Assistance.) This amendment would not change the statutorily established number of Under Secretaries.

Subsection (c)(2)(A) modifies section 116(c) of the Foreign Assistance Authorization Act of 1961 as amended (FAA) to place responsibility for determining whether recipient nations meet human rights standards in the Secretary of State, rather than the Assistant Secretary for Human Rights and Humanitarian Affairs; subsection (c)(2)(B) deletes references to this Assistant Secretary in section 502B(b), 502B(c)(1) and 505(g)(4)(A) of the FAA; and subsection (c)(2)(C) repeals section 624(f) of the (FAA), establishing the Assistant Secretary of State for Human Rights and Humanitarian Affairs and making this individual responsible for the observation and review of human rights and humanitarian affairs (these responsibilities are otherwise vested in the Secretary). Subsection (c)(3) deletes the reference to the Assistant Secretary for Human Rights and Humanitarian Affairs in section 5(d)(1) of the Arms Export Control Act and replaces it with a reference to the Secretary of State.

Subsection (c)(4) amends the title and text of section 104(a) of the Immigration and Nationality Act, as amended, to remove references to the Bureau of Consular Affairs and repeals subsections 104(b) through (e) establishing the Bureau of Consular Affairs, the Assistant Secretary of that bureau and certain constituent offices.

Subsection (c)(5) repeals section 9 of the Department of State Appropriations Authorization Act of 1973, which established the Bureau of Oceans and International Environmental and Scientific Affairs.

Subsection (c)(6) amends section 35 of the Department of State Basic Authorities Act of 1956 (as amended), which established the Bureau of International Communications and Information Policy (CIP). This change reassigns the Congressionally mandated authorities originally placed with the Director of CIP to the Secretary of State, consistent with the organizing principles above.

Sec. 112(d). Conforming Changes.

This section would conform the listing of positions on the executive schedule established in chapter 53 of Title 5, United States Code, to the same organizing principles. The changes from 15 to 17 Assistant Secretaries results from striking the specific listings of the Assistant Secretary for OES and the Assistant Secretary for International Narcotics Matters and adding two additional Assistant Secretaries to the general list.

Sec. 113. Capital Programs.

Sec. 113(a). Multi-Year Contracting for Moscow and Advance Payments for Long-term Leases and Lease-Purchase.

Subsection (a) first amends section 9 of the Foreign Service Buildings Act of 1926 by adding a new subsection (d) in order to provide needed statutory authority for multi-year contracting in advance of appropriations for acquisition of properties and construction of diplomatic facilities in Moscow under the Foreign Service Buildings Act. It also describes the conditions which must be met for this authority to be used. These conditions include determinations that such a contract will serve the best interests of the U.S. Government by achieving economies in administration, performance, and operation; or by increasing the quality of service of the contractor; or by encouraging effective competition; and that such a contract will not inhibit small business concerns from competing for the contract.

Second, it adds a new subsection (e) to section 9, which clarifies the authority of the Department to make advance payments for long-term leases and lease-purchases for overseas property acquisition, when determined by the Secretary to be in the government's interests. The Department currently has authority under section 3 of the Basic

Authorities Act to make advance payments with respect to leases for periods of up to ten years and has additional authority with respect to leaseholds under section 6 of the Foreign Service Buildings Act. This provision would clarify the authority to make advance payments with respect to longer-term leaseholds and lease-purchases.

Sec. 113(b). Exemption of Contracts From Competition.

Subsection (b) would extend the current exemption from competition procedures in the Foreign Service Buildings Act for contracts for alteration or repair to an exemption for all contracts for carrying out the purposes of that Act. This could occur only upon determination that local overseas conditions preclude reasonable application of provisions of that Act and would thus prevent acquisitions needed to carry out government purposes. Adoption of this amendment would result in cost savings to the Department.

Sec. 113(c). Approval of Leases.

This section amends Section 10 of the Foreign Service Buildings Act to replace the current $25,000 threshold at which leases must be approved by the Secretary of State or his designee in Washington with a provision permitting the Secretary to establish by regulation the threshold at which leases must be so approved.

The $25,000 limitation was established by law in 1966 and has remained the same since that time. Inflation, the weakening of the dollar, particularly at European and Far Eastern posts, general market conditions, and the passage of time have made the $25,000 limitation obsolete at certain posts.

If the proposed change is enacted, the Department intends to implement a system involving variable thresholds for specific posts as determined by local market conditions, up to a current maximum of $45,000. We believe that this system would be sufficient to provide greater flexibility to posts and still ensure that the oversight responsibilities of the Office of Foreign Buildings Operations over the leasehold program can be effectively carried out. The $25,000 ceiling currently in effect will remain unchanged for most posts.

Sec. 114. Transfers and reprogramming.

Sec. 114(a)(1).

Subsection (a)(1) amends section 24 of the Department's Basic Authorities Act to provide authority similiar to that available to the Department of Defense (e.g., §791 of P.L. 97-377) to transfer unobligated banances in accounts under the heading "Administration of Foreign Affairs" into and merge them with the Department's Buying Maintenance Fund at any time prior to the end of the five year period following the period of availability, except that the balance of the Buying Power Maintenance account may not exceed $100 million as the result of such a transfer. Once transferred, the balances could only be used for the purposes for which the Buying Power Maintenance account was established, that is, to offset adverse fluctuations in foreign currency exchange rates or unbudgeted overseas wage and price changes. This provision applies only to funds appropriated for fiscal years 1987 and thereafter.

Sec. 114(a)(2).

Subsection (a)(2) amends authority in section 24(d) to transfer up to 10% of the amount authorized between certain named accounts. The accounts currently named do not correspond to the headings under which funds are authorized; this amendment simply conforms the authority to current authorization practice.

Sec. 114(a)(3).

Subsection (a)(3) would add new subsection (f) to section 24 of the Basic Authorities Act. This subsection would authorize transfer of appropriations among all appropriations accounts funded by the Department of State Appropriations Act; however, no account could be increased by more than 35% of the amount appropriated and neither the "Salaries and Expenses" account nor the "Acquisition of Foreign Buildings Abroad" account may be increased by more than 10%. This transfer authority is needed to deal with uncertainties which cannot be programmed for in certain small accounts, in particular the Emergencies in the Diplomatic and Consular Services and the International Conference and Contingencies accounts. Any such transfer would be subject to notification pursuant to the reprogramming procedures set forth in section 34 of the Department of State Basic Authorities Act.

Sec. 114(b).

Section 114(b) repeals the requirement to notify Congress in advance pursuant to the reprogramming procedures contained in section 34 of the Basic Authorities Act regarding all expenditures of funds authorized under the Omnibus Diplomatic Security and Antiterrorism Act, even if the expenditures are for the identical purposes that Congress has previously been made aware of, *e.g.*, through budget submissions. Originally this requirement enabled Congress to be fully informed of any changes in the long-term Diplomatic Security construction plan presented to it in 1986. This function is now served by the 5-year plan included and updated annually in the Department's budget for FBO.

Sec. 114(c).

Subsection 114(c)(1) amends section 34 of the Basic Authorities Act to conform the base for reprogramming between projects, now $250,000, with the base provided in recent years for reprogramming in the annual appropriations act, $500,000. Subsection 114(c)(2) adds a new subsection (c) to section 34, which would authorize, notwithstanding any other provision of law, including subsection (a) and (b) of section 34, obligation and expenditure of funds without prior notification to Congress in emergency situations, as determined by the Secretary of State. In the event of any such determination, notification would be required as early as is practicable and in no case later than three days after such obligation or expenditure. The notification would be required to contain an explanation of the circumstances necessitating the use of the subsection.

Subsection 114(c)(2) also adds a new subsection (d) to section 34 providing that funds may be reprogrammed within the Foreign Service Buildings Fund for projects previously justified to Congress in the Departments 5-year foreign buildings plan without providing advance notification otherwise required by section 34. This authority could only be used, however, for reprogrammings that do not involve new starts (that is, projects never before justified to Congress) and only up to an amount equal to fifteen percent of funds available in that Fund for the relevant fiscal year. The Secretary would be required to submit quarterly reports to Congress on all reprogramming activities for which no advance notification was provided.

Sec. 115. Foreign Affairs Administrative Support System.

This section would amend section 23 of the Basic Authorities Act to clarify that full and complete payment through advances of funds or reimbursement is required for any services provided by one agency to another pursuant to agreements for the provision of services on a reimbursable basis authorized under the section.

Sec. 116. Defense Trade Controls Registration Fees.

Section 116 increases from $500,000 to $700,000 the authorized level of defense trade controls registration fees that may be made available for payment of expenses as set forth in section 45(a) of the Basic Authorities Act. This increase is necessary to meet increasing costs that result from (1) increased enforcement requirements placed on this office by recent legislation, and (2) increasing licensing requirements resulting from more sophisticated technology transfers and more complex export arrangements. An effective, fully-staffed defense trade control function is also essential to meet new policy needs, such as intense review of licenses that may pertain to chemical and ballistic missile proliferation matters. Increases in collections resulting from a projected increase in the number of registrants should enable $700,000 to be available for these purposes. The amendment also changes all references to munitions control to conform with the new name of the office, Defense Trade Controls.

Sec. 117. International Meetings.

This section would provide authority for the Department to pay necessary expenses in cases in which the United States Government is responsible for preparations of an international meeting, and would provide authority to rent space in the United States and hire personnel without regard to the Civil Service laws for these meetings. The section would also permit the Department to retain any reimbursements or advances received with respect to its provision of services in connection with preparations for an international meeting. Such reimbursements or advances shall be credited to the appropriation charged for such expenses.

Sec. 118. Model Language Posts.

This section would repeal an existing requirement that the Department establish 10 Model Language Posts, at which everyone assigned would be required to speak the primary post language, in recognition of the Department's inability to allocate resources for this purpose in these tight budgetary times. Adoption of this amendment would result in cost savings to the Department.

Sec. 119. Child Care Facilities at Certain Posts Abroad.

This section would extend for two additional years authority for a pilot child care program which would now expire at the end of fiscal year 1991.

Sec. 120. Foreign Service Institute Facilities.

This section would provide authorization for the final $20 million needed to complete the National Foreign Affairs Training Center Project. It would bring the total authorized in connection with the project to $81 million, including $11 million previously authorized for design and other preliminary work on the project.

Sec. 121. Availability of Funds.

This section would amend section 2 of the State Department Basic Authorities Act by adding two new authorities. New subsection "(l)" would authorize the Department to pay obligations arising under international agreements, conventions and binational contracts to the extent otherwise authorized by law; new section "(m)" would allow the Department to procure special purpose passenger motor vehicles without regard to price limitations otherwise established by law, an essential authority for the Depart-

ment's purchase of, for instance, right-hand drive vehicles in countries where that is required. These two provisions have previously been included in annual Department appropriations acts.

Sec. 122. Advance Payments.

This section would amend section 3 of the State Department Basic Authorities Act by adding a new subsection (a) that would authorize the Department to make payments in advance of the U.S. share of necessary expenses for international fisheries, pursuant to 31 U.S.C. 3324. This provision has previously been included in Department appropriations acts.

PART C—DIPLOMATIC RECIPROCITY AND SECURITY

Sec. 131. Occupancy of Facilities.

This section amends three existing provisions of law to make clear that the prohibition of Soviet occupancy of facilities in Washington applies to their new chancery facilities on Mt. Alto and to any other new principal chancery building in Washington, pending U.S. ability to occupy its new chancery in Moscow and resolution of U.S. claims against the Soviets arising out of construction of that chancery. Mutual and reciprocal openings of cultural or trade centers, for example, would be permitted.

Sec. 132. Diplomatic Construction Program.

This section amends the Omnibus Diplomatic Security and Anti-terrorism Act by raising the dollar threshold at which American contractors are required for non-security related projects from $5 million to $10 million, and by making explicit that American contractors are required to be used for smaller projects only when they are technical security projects.

Sec. 133. Special Agents.

The proposed amendment to subparagraph (5) of section 37(a) of the State Department Basic Authorities Act would enhance the ability of DOS special agents, as full members of the law enforcement community, to uphold U.S. law in performing a broad range of protective duties and investigative requirements worldwide by providing them with authority comparable to other services having similar mandates.

PART D—PERSONNEL

Sec. 141. Ambassadorial Appointments.

This section would codify the authority of the President with the advice and consent of the Senate to appoint Ambassadors who are not Chiefs of Mission, by a modification of section 302 of the Foreign Service Act of 1980. It is technical in nature.

Sec. 142. Chief of Mission Salary.

This section restores parity between Senior Foreign Service and Senior Executive Service members accepting Presidential appointments, for pay purposes, as envisioned by section 402 and 405 of the Foreign Service Act of 1980. It amends section 302(b) of the Foreign Service Act of 1980 to give members of the Service appointed to a position in the executive branch by the President the option of choosing whether (a) to continue to receive the salary and benefits, including leave and eligibility for performance pay, to which the member would be entitled in the Senior Foreign Service or (b) to receive the salary and leave (if any) of the position to which the member is appointed by the President. It would also amend section 401(a) to restore the Senior Foreign Service to the same status as the Senior Executive Service by changing references to Level II to Level I for setting pay caps. See P.L. 101-509, section 529 (amending 5 U.S.C. section 5307(a)). This amendment affects primarily chiefs of mission although certain other senior positions at the Assistant Secretary level and above in the Department are also covered. It restores the option of retaining foreign service pay and benefits that existed prior to enactment of the 1988-89 authorization act, in recognition of the fact that career members of the Foreign Service should not be penalized in any way by accepting an assignment that involves a Presidential appointment.

Sec. 143. Prescriptive Relief Pending Completion of Grievance and/or Judicial Proceedings.

This section would conform Foreign Service practices in separation cases to those currently applying to the Civil Service; that is, instead of allowing the Foreign Service Grievance Board to direct retention of members in active status pending resolution of their cases, it would permit separation in certain circumstances, with the possibility of reinstatement/back pay if the employee prevailed. It would also allow employees to be suspended pending a hearing for separation or grievance if there is reasonable cause to believe that the person who is the subject of the proceeding has committed a crime punishable by imprisonment.

Sec. 144. Retirement Eligibility for Certain Employees of International Organizations.

This section is intended to correct two problems which result from recent reforms in Federal employee benefits laws and affect Federal employees who accept a temporary transfer to employment with an international organization. In general, section 3582 of title 5, United States Code, provides reemployment rights to Federal employees who transfer with agency approval to an international organization and allows those individuals to continue Federal retirement and insurance coverage while so employed.

Recent amendments to the statutory authorities for the Civil Service Retirement System (CSRS) and the Federal Employees' Group Life Insurance (FEGLI) and Federal Employees Health Benefits (FEHB) Programs present a question as to whether employees under these programs may continue their participation following a transfer to an international organization on or after October 1, 1988. Subsection 108(a) of Public Law 100-238 amended the CSRS, FEGLI, and FEHB laws (5 U.S.C. 8347(o), 8713, and 8914, respectively), effective October 1, 1988, to bar further extensions of coverage under extraneous provisions of law to individuals who would otherwise be ineligible for such coverage due to their being employed by an entity other than the Federal Government. While the authority for extension of Federal retirement and insurance coverage during a transfer to an international organization is outside of those benefit laws, the basis for the extension of coverage is the fact that such service is in the Government's interest and the affected individuals are serving on a direct transfer from a Federal agency, with statutory reemployment rights, under remedial provisions of law that merely permit them to continue rather than acquire benefits coverage. Therefore, OPM has advised these employees that they may continue to retain CSRS and insurance coverages by paying any necessary employee contributions.

However, the Federal Retirement Thrift Investment Board has determined that subsection 108(a) of Public Law 100-238, in conjunction with section 125 of that law authorizing Thrift Savings Plan (TSP) contributions from specified groups of employees who are paid from non-federal sources, bars TSP participation under section 8351 of title 5, United States Code, by CSRS participants during any transfer to an international organization which began on or after October 1, 1988. Proposed subsections 144(a), (b), and (c) would eliminate the problem by amending the definition of "employee" in the CSRS, FEGLI and FEHB laws, effective October 1, 1988, to expressly include employees who elect to continue program participation during employment with an international organization under 5 U.S.C. 3582.

A second problem involves employees covered by the recently-established Federal Employees' Retirement System (FERS), or Foreign Service Pension System (FSPS), none of whom may continue such coverage if employed outside the United States by an international organization. Participation in both of these Federal retirement systems requires that the individual's employment also be subject to social security taxes. However, the Social Security Act and the Internal Revenue Code do not allow international organization employees abroad to have social security coverage. On the other hand, employees working in the United States for international organizations are deemed to be self-employed for purposes of social security taxes. The international organization generally reimburses these employees for the tax over and above the tax paid by employed persons. Subsections 144 (d) through (j) would amend applicable definitions in the FERS and FSPS laws, the Social Security Act, and the Internal Revenue Code so that Federal employees who leave a position in which they are subject to social security employment taxes to transfer to international organization employment abroad would similarly be deemed self-employed persons for purposes of social security coverage. This would permit continued FERS or FSPS participation.

Section 3582 of title 5 assigns responsibility for continuing employee benefit contributions during international organization employment to the employee and the former employing agency. Voluntary employee contributions to the Thrift Savings Plan through salary reduction are an important component of FERS and FSPS coverage. Accordingly, subsection 144(j) of the draft legislation would add a provision to section 3582 addressing procedures to be followed in effecting a salary reduction for TSP purposes that would allow a transferred employee to have TSP contributions qualify for preferential tax treatment described in section 8440 of title 5, United States Code.

Subsections 144(d) through (j) would be effective on and after January 1, 1987, to coincide with the commencing date of FERS and FSPS.

Sec. 145. Commissary Access.

This section would amend section 31(c) of the State Department Basic Authorities Act to permit access to Department of State commissaries by American citizens employed as teaching or other staff by American sponsored, USG assisted overseas schools, where determined by the Secretary to be appropriate in light of exceptional circumstances and consistent with the Vienna Convention on Diplomatic Rights. Such access would serve as an incentive for educators to work at these schools, which would benefit the entire U.S. Government community at posts.

Sec. 146. Storage of Personal Effects.

This section would amend section 901 of the Foreign Service Act of 1980 to allow the government to extend the period of temporary storage for household effects in extraordinary circumstances for up to an addi-

tional three months beyond the three months now allowed. It is anticipated that this additional period would be provided only when the delay in taking effects out of storage would clearly be beyond the control of the employee.

Sec. 147. Transportation of Remains.

This section amends subsection 901(10) of the Foreign Service Act to allow the remains of decreased members of the Foreign Service to be shipped to a home of record or separation address, if they are assigned in the United States at the time of death. Currently, under subsections 901(1) and 901(11) of the FSA, the travel of dependents and the shipment of personal effects to the home of record is permitted, but not shipment of the remains, unless the member of the Service was serving abroad.

Sec. 148. Amendments to Title 5.

Sec. 148(a). Duration of Payments: Rates: Active Service Period.

This section amends section 5523(a) by inserting language (already contained in section 5522) to clarify the longstanding practice that dependents whose departure is officially authorized or ordered are entitled to the allowances authorized by this section even if the employee remains at post.

Sec. 148(b). Lump-Sum Payment for Accumulated and Accrued Leave on Separation.

This subsection would amend section 5551(a) to prohibit inclusion of any post differentials or foreign or territorial allowances for hardship in lump sum leave payments for employees who retire from a post abroad for service as part of a tour of duty or extension commencing on or after the effective date of this Act. This amendment would produce Government-wide savings.

Sec. 148(c). General Provisions.

This subsection would amend section 5922 to allow an agency to provide for children of employees assigned overseas to complete their current school year if the employee dies. Education and/or living quarters allowances for the children and other family members could be continued by the agency for the purpose of allowing such children to complete the current school year at post. Also, education allowances could be continued for a child in a school away from post until the end of the school year. Similarly, an education allowance for school away from post may be continued to the end of the school year if the employee or spouse is evacuated or ordered to depart.

Sec. 148(d). Quarters Allowance.

This subsection would amend section 5923 to enable the Department to combine the present separate temporary lodging and supplementary post allowances into a single per diem temporary subsistance allowance comparable to that paid employees on transfers to and within the United States. The revision from "3 months" and "1 month" to "90" and "30" days is for simplification and to correspond to the general use of a fixed number of days, rather than months, for similar benefit periods. New paragraph (C) is in response to the fact that due to extremely difficult housing market rental conditions in a few locations abroad, the three-month period has not permitted employees the necessary time to locate and secure suitable housing. It would permit heads of agencies to extend the temporary lodging period by up to an additional 60 days when such conditions were beyond control of the employee.

Sec. 148(e). Cost-of-Living Allowances.

Paragraph (1), which is complimentary to the change proposed in subsection 149(d), amends section 5924(1) to make clear that a person receiving the temporary subsistence allowance cannot also receive a post allowance for the same period. Paragraph 2 would result in two revisions of particular importance to Civil Service employees. As a preliminary matter, subparagraph (2)(A) clarifies the definition of "reasonable expenses" covered by the transfer allowance to include subsistence and other relocation expenses and specifically includes lease termination payments. Subparagraph (2)(B) provides that the transfer allowances currently available on departure from the United States to a foreign area would also be permitted on similar transfers from U.S. territories, possessions and Puerto Rico. Subparagraph (2)(C) provides that the transfer allowance is currently available to Foreign Service personnel agreeing to 12 months additional service upon return to the U.S. under section 901(14) of the Foreign Service Act. This amendment would provide the same basis of payment for employees not covered by that Act, for example, those in the Civil Service. Under present legislation, Civil Service employees can be paid a transfer allowance only upon return to the U.S. between foreign assignments.

Sec. 148(f). Education Allowances.

This section updates and improves the education allowance system to bring it into line with current circumstances and problems through amendments to section 5924(4). Paragraph (1) permits payment of educational allowances for children of employees being transferred or newly assigned to a Foreign Service post with inadequate schooling, to pay for education away from post from the beginning of the school year, even if the member of the Service does not depart the United States until after the beginning of the school year. The purpose of this provision is to ensure educational continuity.

Paragraph (2) clarifies the authority to provide educational services to children with disabilities before they reach kindergarten age. Part B of the "Individuals with Disabilities Education Act" (P.L. 101-476) generally requires states to offer public educational services to children with disabilities from age three. This amendment will ensure that overseas education allowance policy is consistent with U.S. public school education practice for children with disabilities.

Paragraph (3) would permit post-secondary educational travel for dependents not only for undergraduate college education, but also education at other accredited institutions such as nursing, technical, vocational, music and performing arts schools which are not considered colleges. This amendment is necessary in order to provide the appropriate kinds of post-secondary education for a wider variety of chosen career fields for dependent children. The term "educational institutions" in the text of the amendment is drawn from 38 U.S.C. 1701(a)(6). Accredited educational institutions at which these benefits can be used will be determined by reference to an established list. The list or lists to be used will be specified by regulations issued by the Secretary.

Sec. 148(g). FSN Leave Transfer.

This subsection would amend 5 U.S.C. 6331(1) and 6361(1) to allow voluntary leave transfers by FSNs, on the same basis as now exists for U.S. citizen employees.

PART E—MODIFICATIONS TO OTHER LAWS

Sec. 151. Danger Pay.

This section repeals a requirement which results in Danger Pay being granted by certain individual agencies, regardless of what the government-wide approach may be. The Department's intention would be for the Secretary of State to make Danger Pay determinations taking into account information and recommendations of other agencies through the operation of an inter-agency allowances working group.

Sec. 152. Post Staffing.

This section repeals a number of statutory provisions which establish positions for representatives of certain agencies at certain posts. As with section 151, the purpose is to permit these determinations to be made by the Secretary, in consultation with all affected agency heads.

Sec. 153. Travel Advisories.

This section repeals a requirement for a travel advisory and report which are no longer needed.

Sec. 154. Post Opening and Closings.

This section repeals restrictions on the opening and closing of Foreign Service posts.

PART F—INTERNATIONAL ORGANIZATIONS

Sec. 161. Contributions to the International Red Cross.

This section would repeal the earmark for the Red Cross. In this case, an earmark for the International Committee of the Red Cross ordinary budget reduces the ability to respond to the regional appeals issued by ICRC and other international organizations. It also precludes our using contributions in response to appeals as leverage to stimulate contributions from other donors.

Sec. 162. Reform in Budget Decision-Making Procedures of the United Nations and Its Specialized Agencies.

Subsection (a) provides that the President may make full payments to the UN and its specialized agencies unless one of them has not been implementing consensus-based decision-making on budgetary matters. Subsection (b) clarifies that the Department may also make arrearage payments for assessed contributions in prior years, without regard to subsection (a) of this section, section 405 of Public Law 101-246 and section 143 of Public Law 99-93, as amended, provided such payments would further U.S. interests in the organization to which payment is made.

Sec. 163. Permanent International Association of Road Congresses.

This section would repeal the current cap of $3000, enacted in 1926, on contributions to the PIARC, and provide authorization for such funds as may be necessary to maintain U.S. membership.

Sec. 164. International Boundary and Water Commission.

This provision, previously included in Department appropriations legislation, would authorize the United States Section, International Boundary and Water Commission, United States and Mexico, to incur representational expenses.

Sec. 165. Report to Congress.

This section would repeal the reporting requirement set forth at section 701(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, with respect to Soviet and Soviet-bloc secundment practices within the United Nations. Progress has been made in addressing the concerns that prompted the passage of section 701(b), and the requirement of an annual report on the subject is no longer appropriate.

PART G—JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Sec. 171. Japan-United States Friendship Commission.

The Japan-United States Friendship Commission administers a bilateral grants program in the United States and Japan. Grant activity is funded from a trust fund established by appropriations in dollars and in

yen. Dollar funds may only be spent in the United States and yen funds may only be spent in Japan under current law. Since the Commission runs both grant programs from the United States, the administrative expenses for the two programs must be funded in dollars. This amendment would allow the Commission to pay for up to half of its administrative expenses from the yen portion of the fund.

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993—SUMMARY OF DEPARTMENT OF STATE PROVISIONS

PART A—AUTHORIZATION OF APPROPRIATIONS; ALLOCATIONS OF FUNDS; RESTRICTIONS

Section 101–105 provide authorizations for appropriations in the standard categories used by the authorizing committees:

Sec. 101. Administration of foreign affairs.

Sec. 102. International organizations and conferences.

Sec. 103. International commissions.

Sec. 104. Migration and refugee assistance.

Sec. 105. Other programs.

PART B—DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES; FOREIGN MISSIONS

Sec. 111. Chief of Mission.

Reaffirms the responsibility of the Chief of Mission for the overall operation of U.S. diplomatic missions abroad, including non-executive branch personnel, as originally contained in Section 207 of the Foreign Service Act of 1980.

Sec. 112. Authority of the Secretary of State.

This section provides Congressional findings concerning organizing principles for the Department, and modifies existing legislation to vest authority in the Secretary of State, rather than in subordinate units. No organizational changes are made by this section; however, if enacted, it would eliminate specific statutory mandates for certain organizations and positions, consistent with the principle that organizational decisions should be made by the Secretary of State.

Sec. 113. Capital programs.

Subsection (a) amends section 9 of the Foreign Service Buildings Act of 1926 to provide needed statutory authority for multi-year contracting for acquisition of properties and construction of diplomatic facilities in Moscow; and to clarify the Department's authority to make advance payments of long-term leases and purchases.

Subsection (b) would extend the current exception from competition requirements to contracts for all purposes authorized in the Foreign Service Buildings Act.

Subsection (c) replaces the current $25,000 ceiling on leases which can be executed at post without referral to FBO with authority for the Secretary to set this limit by regulation. Initially, the limit will be set at $45,000 which reflects inflation since the $25,000 limit was established.

Sec. 114. Transfers and reprogrammings.

Subsection (a) would replenish the Buying Power Maintenance account from funds that would otherwise lapse, make certain technical changes in the existing provision relating to transfer of authorization between accounts, and provide authority to transfer appropriated funds between accounts under certain conditions.

Subsection (b) would repeal the requirement for redundant Congressional notification of certain FBO expenditures.

Subsection (c) would raise the reprogramming notification threshold in Basic Authorities Act to the level specified in current appropriations legislation, provide for reprogramming in advance of Congressional notification in emergency circumstances, and modify reprogramming requirements for the FBO account to permit up to 15% of current funds available to be reprogrammed without advance Congressional notification, subject to certain conditions.

Sec. 115. Foreign affairs administrative support system.

This section would clarify Congressional intent about use of one agency's services by another. It would provide, under reimbursable agreements, for full and complete payment.

Sec. 116. Defense trade controls control registration fees.

This section would raise the existing ceiling on the total amount of fees which can be retained from $500,000 to $700,000.

Sec. 117. International meetings.

This section would provide authorities for leasing quarters in the U.S. and for personal service contracts without regard to Civil Service laws in conjunction with U.S. government hosting of major international meetings, as has been done previously on a case-by-case basis, and to retain reimbursements.

Sec. 118. Model Language Posts.

This section would repeal an existing requirement to establish 10 Model Language Posts, at which everyone assigned would be required to speak the primary post language.

Sec. 119. Child care facilities at certain posts abroad.

This section extends for two additional years authority for a pilot program which now expires at the end of FY '91.

Sec. 120. Foreign service institute facilities.

Provides authorization for the final $20 million needed to complete construction of the National Foreign Affairs Training Center Project.

Sec. 121. Availability of funds.

This section is technical, moving to the Basic Authorities Act provisions now included in annual appropriations bills.

Sec. 122. Advance payments.

This provision is similar in nature to section 123.

PART C—DIPLOMATIC RECIPROCITY AND SECURITY

Sec. 131. Occupancy of facilities.

This section amends three existing provisions of law to limit the prohibition of Soviet occupancy of facilities in Washington to their new chancery building, pending U.S. ability to occupy our new chancery in Moscow and to resolve claims against the Soviets for construction of that chancery. This would permit mutual exchange of cultural and trade center openings, for example.

Sec. 132. Diplomatic construction program.

This section amends the Omnibus Diplomatic Security and Anti-terrorism Act by raising the dollar threshold requiring American contractors for non-security projects from $5 million to $10 million, and by making explicit that they are required to be used only when the project involves technical security.

Sec. 133. Authority of Diplomatic Security Service Special Agents.

This section would provide extended authority for Diplomatic Security Service Special Agents to make arrests, consistent with authorities which other agencies already have.

PART D—PERSONNEL

Sec. 141. Ambassadorial appointments.

This technical change would clarify the authority of the President with the advice and consent of the Senate to appoint Ambassadors who are not Chiefs of Mission, by a modification of section 302 of the Foreign Service Act of 1980.

Sec. 142. Chief of Mission salary.

This section would restore the ability for COMs and other presidential appointees to elect whether to be paid as career members of the SFS, or as Presidential appointees, rather than only as the latter, and conform pay cap for COMs on total compensation to that in effect for the Civil Service.

Sec. 143. Prescriptive relief pending completion of grievance and/or judicial proceedings.

This section would conform Foreign Service practices in separation cases to those applying elsewhere in government.

Sec. 144. Retirement eligibility for certain employees of international organizations.

This section establishes the eligibility of certain employees of specified international organizations previously U.S. government employees to remain in FERS or the FSPS, based on their prior employment.

Sec. 145. Commissary access.

This section would permit access to Department of State commissaries by American citizens employed by independent international schools, in cases where local governments so permit.

Sec. 146. Storage of personal effects.

This section would amend section 901 of the Foreign Service Act of 1980 to allow the government to extend the period of temporary storage for household effects for up to an additional three months beyond the three months now allowed, under extraordinary circumstances.

Sec. 147. Transportation of remains, dependents and effects.

This section amends subsection 901(10) of the Foreign Service Act to allow the remains of deceased members of the Foreign Service to be shipped to a home of record or separation address, if they are assigned in the United States at the time of death.

Sec. 148. Amendments to title 5, U.S.C.

Subsection (a). Active service period. Amends 5 U.S.C. 5523(a) to clarify the eligibility of dependents to receive allowances when under authorized or ordered departure from post, on the same basis as employees.

Subsection (b). Lump-sum payment for accumulated and accrued leave on separation. Amends 5 U.S.C. 5551(a) to base lump sum leave payments on base salary, excluding differential and COLAs which might be in effect at a foreign post.

Subsection (c). General provisions. Amends 5 U.S.C. 5922 to allow continuation of housing and of educational allowances to allow dependents to remain at post through end of the school year, notwithstanding the death of the employee.

Subsections (d) and (e)(1). Quarters and cost-of-living allowances. Amend 5 U.S.C. 5923(1) and 5924(1), respectively, to provide for combination of the present temporary lodging and supplementary post allowances into a single per diem type allowance and authorizes payment for an additional 60 days in special circumstances.

Subsection (e)(2). Transfer allowance. Modifies existing transfer allowance (5 U.S.C. 5924(2)) to allow reimbursement of unavoidable expenses incidental to settling an unexpired lease at post; and to place civil service on same footing as foreign service for transfer allowances upon return to the U.S.

Subsection (f)(1) and (f)(3). Educational allowances. Amends 5 U.S.C. 5924(4) to provide educational allowances once an assignment is made, in cases where the transfer of the

employee does not occur until after the school year has begun; and to allow travel to accredited but non-traditional institutions of higher education, in addition to colleges and universities.

Subsection (f)(2). Preschool for handicapped children. Amends 5 U.S.C. 5924(4) to clarify ability to pay for pre-school education allowance for handicapped children ages three to five.

Subsection (g). FSN leave transfer. Amends 5 U.S.C. 6331(1) and 6361(1) to allow voluntary leave transfers by FSNs, on the same basis as now exists for American citizen employees.

PART E—MODIFICATIONS TO OTHER LAWS

Sec. 151. Danger Pay.

Repeals a requirement which results in Danger Pay being granted by certain individual agencies, regardless of what the government-wide approach may be.

Sec. 152. Post staffing.

Repeals a number of statutory provisions which establish positions for representatives of certain agencies at designated posts. As with section 141, the purpose is to permit these functions to be carried out uniformly by the Secretary, in consultation with all affected agency heads.

Sec. 153. Travel advisories.

Repeals a requirement for a travel advisory and report which are no longer needed.

Sec. 154. Foreign Service posts.

Repeals prior restrictions on the opening and closing of Foreign Service posts.

PART F—INTERNATIONAL ORGANIZATIONS

Sec. 161. Contributions to the International Red Cross.

Sections 109(b) of the FY '86-'87 Authorization Act, and 742(a) of the FY '88-'89 Act, relating to U.S. funding policy for the International Committee of the Red Cross are amended to remove certain funding restrictions.

Sec. 162. Reform in budget decision-making procedures of the United Nations and its specialized agencies.

Replaces existing Kassebaum-Solomon certification requirements with one which allows full payment of U.N. and specialized agency assessments unless a specific agency is not in compliance with budgetary improvement requirements. It also allows payment of arrearages when such payment would further United States interests.

Sec. 163. Permanent International Association of Road Congresses.

Eliminates current $3,000 limit on U.S. contributions and provides authorization for such sums as may be necessary to maintain U.S. membership.

Sec. 164. International Boundary and Water Commission.

This section moves language currently required to be included in each annual appropriations bill to the permanent statute for the IBWC, to provide for representational expenses.

Sec. 165. Report to the Congress.

This section repeals the requirement to submit a report to the Congress concerning secondment practices of the U.N. which has become obsolete.

PART G—JAPAN-UNITED STATES FRIENDSHIP COMMISSION

Sec. 171. Japan-United States Friendship Commission.

This section provides authority under specified conditions for yen funds held by the Commission to be used for up to 50% of administrative expenses in the United States.

DEPARTMENT OF STATE,
Washington, DC, February 26, 1991.

Hon. DAN QUAYLE,
President of the Senate.

DEAR MR. PRESIDENT: In accordance with Section 15 of the Act of August 1, 1956, as amended (22 U.S.C. 2680), there is transmitted herewith proposed legislation to authorize appropriations for the Department of State to carry out its authorities and responsibilities in the conduct of foreign affairs during the fiscal years 1992 and 1993 and for other purposes contained in this bill.

The primary purpose of the bill is to provide authorization of appropriations for (1) "Administration of Foreign Affairs" which supports the operation of the United States diplomatic and consular posts abroad and the Department of State in the United States; (2) "International Organizations, Conferences, and other activities," which includes contributions to meet obligations pursuant to treaties, conventions or specific acts of Congress and other activities; (3) "International Commissions," which enables the United States to fulfill treaty and other international obligations; (4) "Migration and Refugee Assistance," which funds the United States annual contribution to various refugee assistance programs and to the International Committee of the Red Cross; and (5) Other authorizations for appropriations, including "Bilateral Science and Technology Agreements," and "Soviet-East European Research and Training." A section-by-section analysis further explaining the proposed legislation is also enclosed.

The Office of Management and Budget advises that there is no objection, from the standpoint of the administration's program, to the submission of this proposed legislation to the Congress.

Sincerely,

JANET G. MULLINS,
Assistant Secretary, Legislative Affairs.●

By Mr. BENTSEN (for himself, Mr. SIMPSON, Mr. JOHNSTON, Mr. BOREN, Mr. BREAUX, Mr. COCHRAN, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. CRAIG, and Mr. WALLOP):

S. 580. A bill to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons; to the Committee on the Judiciary.

TREATMENT OF CERTAIN HYDROCARBONS

Mr. BENTSEN. Mr. President, with my distinguished colleague from Wyoming, Senator ALAN SIMPSON, I introduce today a bill which should help reverse the decline in exploration and development of domestic oil and gas reserves.

The Persian Gulf conflict highlighted that decline. The gulf conflict reminded us that the United States has become overly dependent on foreign oil. As we have consumed more foreign oil, we have abandoned intensive exploration and development of domestic reserves. Since 1986, exploratory drilling has fallen by 60 percent and production by 15 percent.

The number of independent producers has also fallen, a decrease which is particularly unfortunate because independents have historically drilled the majority of exploratory wells. Their numbers dropped from 13,000 in the early 1980's to 5,000 by 1989. Those numbers are accompanied by a decline in geological surveys for reserves. Seismic crew counts declined by 75 percent over the last decade.

Mr. President, my bill seeks to remove an obstacle toward risking the large sums of capital and time necessary for oil and gas exploration. That obstacle is section 541 of the Bankruptcy Code. Section 541 permits a bankruptcy trustee, for a bankrupt leaseholder, to extinguish the interest that an independent oil or gas operator contractually acquires in the wells he drills on a leasehold. This is an interest the leaseholder had contractually transferred to the operator, before the leaseholder's bankruptcy. My bill amends 541 by excluding this interest from the bankruptcy estate.

This legislation therefore denies bankruptcy trustees the discretion to wipe out the efforts of independent operators who are working to make us more self-sufficient.

My bill recognizes and incorporates the industry custom and practice by which these oil and gas interests are transferred. They are typically transferred through contracts known as farmout agreements. My bill uses the term "farmout agreement" as a convenient and precise way of identifying which transfers should be excluded from section 541. The bill also permits bankruptcy judges to refer to industry custom and practice, to decide if hybrid agreements fall within this exclusion.

Generally, a farmout agreement is one in which the owner of a valid oil or gas lease permits an independent operator to explore and then develop the lease, all at the operator's sole expense and risk. A typical agreement provides that if the operator strikes oil, it will pay the leaseholder a royalty which is a percentage from well proceeds. In exchange, the operator acquires an interest in the oil rights and keeps the balance of well proceeds.

Excluding these interests has two practical effects. The first is that a bankruptcy trustee can no longer unilaterally stop drilling, after the operator has invested considerable time and effort, but before he has struck oil or a dry hole. Section 365 of the Bankruptcy Code enables the trustee to reject executory contracts. A farmout agreement is executory until the operator strikes oil or gas. But for my bill, the trustee could reject the agreement, and stop drilling, up until a moment before the driller strikes a wet well.

The second effect of my bill is that it permits the operator to keep whatever income or interest the leaseholder had contractually agreed the operator could earn from a wet well. But for the bill, the bankruptcy trustee could use section 544(a)(3) to void the farmout agreement, even after the agreement is

no longer executory. In other words, the trustee could stop drilling and the agreement, after the operator has struck oil or gas.

Under most farmout agreements, if drilling results in a dry hole, the operator is the only one who loses. The operator naturally does not acquire an interest in a dry hole. Chances are great that the operator will come up dry and lose his investment. More than 50 percent of wildcat wells are dry holes.

This failure rate is discouragement enough for exploration. This discouragement is compounded by the possibility that a bankruptcy trustee can stop exploration before its conclusion.

These multiple obstacles rebut the presumption that my bill is an exception for some already fat-cat special interest group. Independents are mostly small businessmen and women who, under these circumstances, are innocent third parties in someone else's bankruptcy. My bill seeks to guarantee independents fair treatment under the bankruptcy laws and an even playing field in which they can survive and produce.

My bill is balanced for another reason. It does not exclude what the leaseholder receives in return for having transferred development rights to the independent operator. Whatever the leaseholder receives stays in the bankruptcy estate. The bill therefore still gives the bankruptcy trustee full use of whatever consideration the operator continues to pay the leaseholder, under their farmout agreement.

This bill should become a vital piece of a long-term and comprehensive national energy policy that encourages environmentally responsible exploration and development of America's oil and gas resources. Before becoming forever dependent on foreign oil, we owe it to ourselves that we look for and find every last drop of oil that we can safely extract from our land.

And there is much to extract. The Energy Information Administration estimates that as of 1990, there were 16.5 billion barrels of proven crude oil reserves in the continental United States. The U.S. Geological Survey estimates another 33 billion barrels of yet unproven continental reserves.

The magnitude of those reserves tells me that now is not the time for independent operators to be retreating. To the contrary, they should be forging ahead. I hope my bill will remove at least one obstacle along the road to self-sufficiency.

Mr. President, before I end my remarks, I must note that Senators from both sides of the aisle have joined Senator SIMPSON and me in this effort. Joining us as original cosponsors are Senators BOREN, BREAUX, COCHRAN, CRAIG, DOMENICI, JOHNSTON, KASSEBAUM, and WALLOP.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 580

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

SECTION 1. AMENDMENT TO TITLE 11 OF THE UNITED STATES CODE.

Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "or" at the end,

(2) in paragraph (2) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(3) any interest of a debtor in or to liquid or gaseous hydrocarbons which the debtor has transferred or has agreed to transfer through or by a written farmout agreement, or any written agreement directly related thereto.

The trustees' rights, created in sections 365 and 544(a)(3), shall not operate to cancel or otherwise limit the effect of paragraph (3). For purposes of this subsection, the term 'farmout agreement' is a written agreement (A) in which the owner, of the rights to drill, produce or operate liquid of gaseous hydrocarbons on property agrees or is obligated to transfer or assign all or a portion of those rights to another party and (B) in which the other party, its agents or assignees, as consideration, agrees to perform drilling, reworking, recompleting, testing or other similar or related operations to develop or produce liquid or gaseous hydrocarbons on the property. In determining if a farmout agreement exists, the courts shall look to the custom and practices within the oil and gas industry for guidance. This subsection shall not operate to exclude from the debtor's estate the consideration which the debtor retains, receives, or will receive in exchange for transferring its interest in liquid or gaseous hydrocarbons.".

SEC. 2. EFFECTIVE DATE; APPLICATION OF AMENDMENT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENT.—The amendment made by section 2 shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

Mr. SIMPSON. Mr. President, I am very pleased to join with my colleague, Senator BENTSEN, my friend and colleague from Wyoming, Senator WALLOP, in addition to Senators DOMENICI, CRAIG, COCHRAN, KASSEBAUM, BOREN, JOHNSTON, and BREAUX. This bill is nearly identical to a bill which we introduced last session and which had already been passed in the House.

This bill will amend the Bankruptcy Code in a minimal way in order to correct a serious problem which has been discouraging responsible development of our oil and gas resources in the United States. It is the traditional and standard business practice in the oil and gas industry—particularly with smaller, independent oil and gas companies—for an owner of mineral rights to exchange a portion of his rights for various development or drilling activities. In many cases, oil or gas leaseowner often chooses to transfer a portion of those rights to a geologist, engineer, or to another oil company—most often one of the many independent companies I have often spoken—in order to compensate them for their services in subsequent development of the lease. The contracts used in this sort of business arrangement are called farmout agreements. They are often quite lengthly, and the transfer of any interest in the oil and gas developed is dependent upon the successful performance of these contracts. Because these are purely executory contracts at their inception, and many times considered "confidential" by the parties with respect to certain terms, they are rarely recorded in county land records.

As the courts currently apply the Bankruptcy Code, unrecorded farmout agreements are not recognized as documents transferring a legally protected interest in oil or gas. Consequently, if someone enters bankruptcy who has previously transferred an interest through farmout agreement, those interests conveyed are taken away from the innocent third party by the Bankruptcy Court. That is surely not right and this bill will change that.

The legislation we are introducing today is a narrowly tailored response to this problem. This would amend section 541(b) of the Bankruptcy Code is provided that the interests previously conveyed through farmout agreements will not be included as part of the bankruptcy estate in the event the transferor later declares bankruptcy. That is it—a simple solution to a very technical problem which has caused severe hardship on blameless people.

This legislation will go a long way toward fostering the continued responsible development of our Nation's resources. This is a good bill and I earnestly urge my colleagues' support.

By Mr. BOREN (for himself, Mr. HEINZ, Mr. PRYOR, Mr. DANFORTH, Mr. BAUCUS, Mr. SYMMS, Mr. DASCHLE, Mr. MOYNIHAN, Mr. GRASSLEY, and Mr. RIEGLE):

S. 581. A bill to amend the Internal Revenue Code of 1986 to provide for a permanent extension of the targeted jobs credit, and for other purposes; the Committee on Finance.

By Mr. BOREN (for himself and Mr. HEINZ):

S. 582. A bill to amend the Internal Revenue Code of 1986 to provide an incentive for private sector employers to hire and train Persian Gulf Veterans, and for other purposes; to the Committee on Finance.

TARGETED JOBS TAX CREDIT LEGISLATION

• Mr. BOREN. Mr. President, I am pleased to be joining my colleague Senator HEINZ and others in introducing two bills relating to the targeted jobs

tax credit [TJTC]. The first bill would make the credit permanent, restore TJTC eligibility for 23- and 24-year-old disadvantaged youth, and establish a new category for economically disadvantaged Persian Gulf-era veterans. The second bill would establish the Persian Gulf-era veteran category immediately without regard to the other changes.

During the 12 years since its enactment, TJTC has been an unparalleled success. The credit provides an incentive for employers to hire structurally unemployed Americans who have few opportunities to join the work force because they lack job skills, workplace experience, or an adequate education. These men and women often require more thorough training than potential employers can afford to give on their own. Thanks to TJTC, More than half a million structurally unemployed persons throughout the Nation each year are able to leave behind lives of poverty and public assistance in favor of productive contributions to the labor force.

Specifically, TJTC currently provides a tax credit to employers who hire individuals from nine targeted groups. The amount of the credit equals 40 percent of the first $6,000 of wages paid to the employee in his first year on the job. The nine targeted groups include:

First, economically disadvantaged youths—ages 18 to 22;

Second, economically disadvantaged summer youths—ages 16 to 17;

Third, economically disadvantaged youths participating in cooperative education programs;

Fourth, economically disadvantaged Vietnam-era veterans;

Fifth, certain economically disadvantaged exconvicts;

Sixth, vocational rehabilitation participants—disabled workers;

Seventh, aid to families with dependent children [AFDC] recipients;

Eighth, general assistance recipients;

Ninth, supplemental security income recipients.

Through TJTC, over 52,000 Oklahomans have secured employment over the past 10 years. Without the credit these men and women might have been at the end of the unemployment line. This positive record continues despite a decrease since 1988 due to the elimination of 23- and 24-year-old economically disadvantaged youth from eligibility.

Mr. President, I have been a supporter of TJTC in both good and bad economic times. Even when the economy is strong the unemployment rate for the structurally unemployed is higher than the work force average. In times of recession, however, this program becomes even more critical. In a recessionary period, the individuals for whom TJTC was designed to help would suffer the most and the longest.

Despite TJTC's record of success, the budget process has unfortunately forced Congress to make TJTC subject to periodic renewal. Under current law, the tax credit will expire at the end of 1991. The first bill I am introducing today would make TJTC permanent.

I was very glad to see that the President's budget for fiscal 1992 included a 1-year extension of TJTC and I welcome the administration's support. However, I believe the time has come for Congress to recognize that TJTC employers and employees would benefit greatly from the certainty that the credit would be permanently available.

This bill will also restore TJTC eligibility to economically disadvantaged 23- and 24-year-olds. This group was made ineligible in 1988 because of revenue considerations. Congress should make every effort to include them, 23- and 24-year-olds without jobs skills and training face extreme hardship in the labor market.

Finally, this bill creates a new TJTC category for economically disadvantaged Persian Gulf veterans. This provision would apply to men and women who served in the U.S. armed services between August 2, 1990, and the date the President establishes that there is no longer a combat zone in the Persian Gulf. We should do our best to ensure that those who volunteered to put themselves in harm's way for their Nation do not have to stand in unemployment lines at home.

Mr. President, the second bill which I am introducing today will establish the Persian Gulf-era veteran category immediately. It is my hope that this legislation can be enacted quickly and begin to benefit disadvantaged troops in this calendar year, regardless of other desired changes.

Mr. President, no one knows how long the current recession is going to last. However, we do know that TJTC has a proven record of success in both good times and bad. I hope my colleagues will join me in supporting both pieces of legislation. I ask unanimous consent that copies of both bills be printed in the RECORD.

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

S. 581

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

SECTION 1. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) EXTENSION.—Paragraph (4) of section 51(c) of the Internal Revenue Code of 1986 (relating to termination) is hereby repealed.

(b) RESTORATION OF ECONOMICALLY DISADVANTAGED YOUTH STATUS TO INDIVIDUALS WHO HAVE NOT ATTAINED AGE 25.—

(1) IN GENERAL.—Subparagraph (B) of section 51(d)(3) of such Code is amended by striking "age 23" and inserting "age 25".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1991.

SEC. 2. CREDIT ELIGIBILITY FOR CERTAIN PERSIAN GULF VETERANS.

(1) PERSIAN GULF VETERANS DESIGNATED.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 is hereby amended by adding at the end thereof the following new subparagraph—

"(k) economically disadvantaged Persian Gulf veteran."

(2) PERSIAN GULF VETERAN DEFINED.—Section 51(d) of the Internal Revenue Code of 1986 is hereby amended by adding at the end thereof the following new paragraph—

"(17) Persian Gulf Veteran who is a member of an economically disadvantaged family. The term "Persian Gulf Veteran who is a member of an economically disadvantaged family" means any individual who is certified by the designated local agency as—

(A) having served on active duty (other than active duty for training) in the Armed Forces of the United States at any time during the period beginning on August 2, 1990 and ending on the date on which the President of the United States notifies the Congress that no portion of the Persian Gulf is designated as a combat zone, and

(B) being a member of an economically disadvantaged family (determined under paragraph (11))."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of enactment.

S. 582

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

SECTION 1. TARGETED JOBS CREDIT ELIGIBILITY FOR CERTAIN PERSIAN GULF VETERANS.

(1) PERSIAN GULF VETERANS DESIGNATED.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 is hereby amended by adding at the end thereof the following new subparagraph—

"(k) an economically disadvantaged Persian Gulf veteran."

(2) PERSIAN GULF VETERAN DEFINED.—Section 51(d) of the Internal Revenue Code of 1986 is hereby amended by adding at the end thereof the following new paragraph—

"(17) Persian Gulf Veteran who is a member of an economically disadvantaged family. The term "Persian Gulf Veteran who is a member of an economically disadvantaged family" means any individual who is certified by the designated local agency as—

(A) having served on active duty (other than active duty for training) in the Armed Forces of the United States at any time during the period beginning on August 2, 1990 and ending on the date on which the President of the United States notifies the Congress that no portion of the Persian Gulf is designated as a combat zone, and

(B) being a member of an economically disadvantaged family (determined under paragraph (11))."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of enactment.•

• Mr. HEINZ. Mr. President, I am pleased to be joining Senator BOREN today in introducing a bill designed to make permanent the targeted jobs tax credit [TJTC]. TJTC, along with a number of other tried, tested, and successful programs, will expire at the end of this year. I believe that it is important that TJTC be extended perma-

nently. Since its inception in 1978, over 5 million structurally unemployed individuals have found jobs because of this program. We know TJTC works, and it needs to be made permanent.

TJTC is aimed at workers with severe barriers to employment—such as low literacy, lack of communication and problem-solving skills, and physical, mental, or emotional handicaps. Many of these individuals comprise an economic underclass in our inner cities. They are trapped in a vicious circle of poverty and dependency. These structurally unemployed have great difficulty finding jobs in both, good times and bad.

I have held numerous hearings over the last decade on this program, and have talked to many individuals who have found jobs because of TJTC. These people have told me about looking for jobs, and not finding anyone who would take a chance on them. Then they found an employer who understood TJTC, and was willing to give them a chance. A chance is all they needed to prove themselves to be productive members of society; and to turn their lives around.

Andy Kubicsek, is an excellent example of the success of this program. Hired in 1985 as a part-time clerk by the Water Works Giant Eagle Grocery store in Fox Chapel, PA, Andy worked his way up to the position of full-time night manager. Key to Andy's personal success was the opportunity provided by the TJTC program, under which he was hired. Handicapped with blindness, Susan Gephardt, another Pennsylvania resident, had difficulty finding employment—until finding an employer who utilizes TJTC. Over the years, I've heard numerous stories like these that validate the effectiveness and merit of this program.

The companies that use TJTC have told me what a valuable addition to their work force TJTC employees are and how they work to attract and keep these employees. They use the money they earn from the credit to train these individuals, and help them become better employees.

TJTC allows employers a tax credit for employment of individuals belonging to one of nine targeted groups. The amount of the credit is equal to 40 percent of the first $6,000 of wages paid to a member of a targeted group in the first year of employment. The nine target groups of employees are as follows:

First, economically disadvantaged youths—ages 18 to 22;

Second, economically disadvantaged summer youths—ages 16 to 17;

Third, economically disadvantaged youths participating in cooperative education programs;

Fourth, economically disadvantaged Vietnam-era veterans;

Fifth, economically disadvantaged ex-felons;

Sixth, vocational rehabilitation participants—disabled workers;

Seventh, recipients of aid to families with dependant children [AFDC];

Eighth, general assistance recipients; and

Ninth, recipients of supplemental security income [SSI].

In addition to making the program permanent this bill would make two other changes to the program.

First, it reinstates coverages of economically disadvantaged youths who are 23 and 24. During the Technical Corrections and Miscellaneous Revenue Act of 1988 this group was eliminated during the tax conference. Despite the fact that this body included them in our version of the TJTC extension, the conferees dropped 23- and 24-year-olds from the program purely for fiscal reasons.

I believe that this was clearly a mistake. Department of Labor statistics demonstrate that unemployment remains consistently disproportionately high for all individuals under the age of 25. As a result I have worked since to add economically disadvantaged 23- and 24-year-olds back into the program.

Second, this bill adds a new category of coverage under the program for Persian Gulf-era veterans. To qualify under this new category, a person would have to be certified by the designated local agency: First, as having served on active duty in the Armed Forces of the United States at any time during the period beginning on August 2, 1990, and ending on the date on which the President notifies the Congress that no portion of the Persian Gulf is designated as a combat zone; and second, as being a member of an economically disadvantaged family as currently defined under the TJTC Program.

TJTC currently covers economically disadvantaged Vietnam-era veterans. We have a similar responsibility to those who have served us so bravely and successfully in the Persian Gulf to provide every assistance possible in making their transition back to civilian life a smooth one. In addition to including certain Persian Gulf-era veterans as a covered category under this legislation, which applies to 1992 and beyond, Sentor BOREN and I are also introducing today a bill that will expand existing TJTC coverage for 1991, to include coverage for Persian Gulf-era veterans who meet the criteria for certification already described.

The idea behind TJTC is to provide a tax incentive which encourages businesses to seek out and employ disadvantaged workers. By getting these workers off government assistance programs and into private sector jobs, both the individual and society benefit. The up-front cost to the Government in tax credits are largely offset by reductions in Government assistance outlays and increased payroll taxes paid by these workers. In addition, the improved quality of life of those employed under TJTC and their families, which is beyond quantitative measure, cannot be ignored when estimating the value of this program.

I was pleased to see that President Bush in his recently unveiled budget package includes an extension of TJTC. Unfortunately, that extension would only be good through 1992. Each year we go through the process of extending TJTC for a year at a time. That process has got to stop. Many employers are not going to invest the time and money in hiring and training those covered under TJTC if they do not think the program will be around next year. It is past time to make this program permanent—we know it works; let's do whatever is necessary to keep it working!

Mr. President, I urge my colleagues to cosponsor this legislation.•

By Mr. ROTH:

S. 583. A bill to amend the Internal Revenue Code of 1986 to require the recapture of certain losses of savings and loan associations, to clarify the treatment of certain Federal Financial assistance to savings and loan associations, and for other purposes; to the Committee on Finance.

RECAPTURE OF CERTAIN LOSSES

• Mr. ROTH. Mr. President, today I am introducing a bill to restrict the double-dipping now being enjoyed by a privileged few taxpayers as a result of a number of questionable transactions which occurred at the end of 1988 as wealthy investors rushed to the gate to beat the closing of a colossal tax loophole in the code. I welcome the support of the U.S. Treasury which came out in strong agreement today with my position that these investors should not be entitled to take both a deduction and receive Federal insurance on deposits for the same money.

My investigation of this tax issue began last September when a report contracted for by the Resolution Trust Corporation [RTC] was issued. The report concluded in part that there did not appear to be a statutory basis allowing acquirers to deduct built-in losses if they received capital loss coverage that reimbursed them for the economic loss suffered. As the Finance Committee was completing its part of the Budget Reconciliation Act of 1990 I requested that the committee ask for a full study on this issue. Although that request was not ultimately included in the budget bill, the Treasury Department examined and has now completed a study on this same issue.

In a letter to me from Treasury, together with this report, Secretary Brady states that the conclusion of the Department was that "assisted institutions should not be allowed to deduct losses and expenses that are reim-

bursed by the FDIC." The Secretary went on to say that these institutions will most likely challenge the Treasury's conclusion. However, the Department felt that "absent a clear congressional directive to the contrary, in order to protect the general taxpayer, we could not sanction the deductibility of covered losses and expenses and the perverse economic incentives that follow from such deductibility."

The necessity for this legislation is clear. Without an unequivocal legislative solution, the IRS will have to challenge and litigate the deductibility of covered losses and expenses, and the uncertainty of years of litigation could continue on. In fact, Secretary Brady stated that "congressional clarification of this issue seems not only desirable but essential * * * if Congress did not intend in 1981 when it enacted the special tax benefits available in the 1988–89 transactions or desires now to sanction the deductibility of covered losses and expenses, prompt legislative clarification should be enacted so that we may avoid embarking on a course of costly litigation * * * otherwise, I urge Congress to enact clarifying legislation disallowing deductions for covered losses and expenses."

The critical tax issue raised here is the extent to which financial institutions involved in the "1988 deals" may deduct losses and expenses even though they receive assistance payments from the FDIC as compensation for those losses or expenses. When these institutions receive a tax deduction for their losses that are compensated for by FDIC payments, there is a perverse incentive, or "moral hazard," to hold covered assets and to minimize their value when sold. From my perspective, it seems that sound tax and financial policy for the Government would require that assisted institutions not be allowed to deduct losses and expenses from their tax return and receive reimbursements from the FDIC.

LEGISLATIVE SUMMARY

CURRENT LAW

In general, section 165 of the Internal Revenue Code of 1986—the Code—allows deductions only for losses that are not compensated for by insurance or otherwise. However, in 1981 Congress believed that economic conditions had a particularly adverse affect on the country's thrift institutions and passed new section 597 of the Code. This provision modified the tax law to facilite the providing of financial assistance by the FSLIC and mergers of financially troubled institutions into stronger institutions, according to the 1981 conference report. In short, section 597(a) of the Code provides that payments of FSLIC assistance are to be excluded from gross income. Section 597(b) further provides that no adjustment to the basis of the recipient's assets is to be required on account of this exclusion. This rule ensures that the exclusion from gross income granted by section 597(a) is permanent, and not merely a temporary exclusion or deferral, as it would be if it were treated as a nonshareholder capital contribution.

Thus, for example, under these rules, if a taypayer holding a covered asset with a basis of $100 disposes of the asset for $60 and receives $40 of FDIC assistance, it is clear that the $40 will not be included in gross income and will not give rise to any reduction in the basis of the taxpayer's assets. This, however, does not give rise to a deductible loss being realized, as has clearly been the position of some of the investors in the 1988 deals. Their position is that the FDIC assistance should be ignored in applying the Code provisions applicable to the determination of losses; that is, section 165 noted above. However, section 597 of the Code does not provide that FDIC assistance is to be excluded, ignored, or disregarded in determining the amount of the taxpayer's loss upon disposition of an asset, or in determining whether an asset is worthless or partially worthless. It is my position that where assistance expressly serves the function of indemnifying against losses on specified assets and provides compensation equal to the full amount of such losses, then section 165 should bar any loss deduction.

A second problem occurs under the consolidated return rules. Under those rules, a group of affiliated corporations can offset each others income and losses. In addition, a parent corporation's basis in common stock of its subsidiary is reduced by the amount of losses utilized by the parent. Thus, the basis of the subsidiary's stock in the hands of the parent can become negative, creating an excess loss account. Under the regulations, the parent must recapture the excess loss account in the case of certain disposition events, including the sale or transfer of the subsidiary's stock—See Treasury Regulations, section 1.1502–19(b). In addition, a member of a consolidated group owning stock in a subsidiary is required to make a positive adjustment on the basis of the subsidiary's stock for the allocable part of the subsidiary's undistributed earnings and profits for the year—See Treasury Regulations, section 1.1502–32(b)(i). The IRS has taken the position that payments by the FSLIC to a corporation acquiring a savings and loan institution generates earnings and profits, even if those payments were tax free to the acquirer under section 597 of the Code—See for example, PLR 8850052. Earnings and profits so generated therefore cause a positive adjustment in the acquiring corporation's excess loss account or investment account.

EXPLANATION OF PROPOSAL

My proposal would make clear in legislation what I already believe to be the law, as does the Treasury Department. This bill would, without a doubt, clarify that any Federal financial assistance received by purchasers to compensate them for losses incurred is to be considered compensation for purposes of section 165. This legislation, introduced in the House by Ways and Means Members FRANK GUARINI and BRIAN DONNELLY, will put an end to the perverse interpretation of the current law which allows double-dipping.

A second component, a recapture provision, will apply after January 1, 1991, if an association becomes subject to the jurisdiction of a court in a title 11 or similar case, or receives additional financial assistance for the Federal Government. This recapture provision will apply to the parent of the consolidated group and will be an amount equal to the reduction in tax on the parent by reason of the utilization of losses of the acquired institution incurred after January 1, 1991, reduced by required payments in respect of these tax reductions. This provision applies to acquisitions of savings and loan associations which occurred after November 10, 1988 and before January 1, 1989 and with respect to which tax benefits repealed in 1989 were available.

In addition, the bill clarifies that amounts excluded from gross income under section 597 of the code do not generate earnings and profits. Thus, these amounts would not increase the basis of a subsidiary's stock in the hands of the parent and a positive adjustment would not be made in the subsidiary's excess loss account or investment account as a result of these payments.

I would ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 583

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

SECTION 1. RECAPTURE OF CERTAIN LOSSES.

(a) GENERAL RULE.—Section 1503 of the Internal Revenue Code of 1986 (relating to computation and payment of tax) is amended by adding at the end thereof the following new subsection:

"(g) RECAPTURE OF CERTAIN LOSSES OF DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—

"(1) IN GENERAL.—If—

"(A) a domestic building and loan association became a member of an affiliated group by reasons of an acquisition to which this subsection applies, and

"(B) such association after December 31, 1990—

"(i) becomes subject to the jurisdiction of a court in a title 11 or similar case (as defined in section 368(a)(3)), or

"(ii) receives Federal financial assistance (other than assistance pursuant to the acquisition to which this subsection applies),

the tax imposed by this title on the common parent for the taxable year in which such association becomes so subject (or receives such assistance) shall be increased by the amount determined under paragraph (2).

"(2) AMOUNT OF RECAPTURE.—For purposes of paragraph (1), the amount determined under this paragraph is—

"(A) the aggregate reduction in the tax imposed by this chapter on members of the affiliated group by reason of losses of the domestic building and loan association which were incurred after December 30, 1990, and which offset income of other members of such group which were neither domestic building and loan associations nor banks (as defined in section 581), reduced by

"(B) the amount (if any) required to be paid to the Federal Savings and Loan Insurance Corporation (or any successor thereof) in respect of such tax reductions pursuant to the agreement for the acquisition to which this subsection applies.

"(3) ACQUISITIONS TO WHICH SUBSECTION APPLIES.—This section shall apply to any acquisition—

"(A) which occurred after November 10, 1988, and before January 1, 1989, and

"(B) with respect to which the Federal Savings and Loan Insurance Corporation (or any successor thereof) provided money or other property to which section 597 (as in effect on the day before the date of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) applied.

"(4) DOMESTIC BUILDING AND LOAN ASSOCIATION.—For purposes of this subsection, the term 'domestic building and loan association' has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof.

"(5) SPECIAL RULE.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining—

"(A) the amount of any credit allowable under this chapter, or

"(B) the amount of the minimum tax imposed by section 55."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after December 31, 1990.

SEC. 2. TREATMENT OF ASSISTANCE IN DETERMINING EARNINGS AND PROFITS.

(a) GENERAL RULE.—Subparagraph (B) of section 1503(e)(1) of the Internal Revenue Code of 1986 (relating to special rules for determining adjustments to basis) is amended to read as follows:

"(B) earnings and profits shall not include—

"(i) any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property), and

"(ii) any amount excluded from gross income under section 597 (as in effect on the day before the date of the enactment of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to dispositions after December 31, 1990. For purposes of the preceding sentence, any event resulting in an inclusion by reason of an excess loss account shall be treated as a disposition.

SEC. 3. CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE.

(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

(1) any Federal financial assistance payable with respect to any loss of principal, capital, or similar amount upon the depreciation of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

(2) any Federal financial assistance payable with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

(b) FEDERAL FINANCIAL ASSISTANCE.—For purposes of this section, the term "Federal financial assistance" has the same meaning as such term has under section 597(c) of the Internal Revenue Code of 1986.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section shall apply to Federal financial assistance paid in connection with the disposition of property on or after January 1, 1981.

(2) EXCEPTIONS.—The provisions of this section shall not apply to—

(A) any payment to which the amendments made by section 1401(a)(3) of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 apply,

(B) any payment to the extent that the assessment or collection of any increase in tax by reason of such provisions is barred by any law or rule of law, and

(C) any amount received by a taxpayer to the extent that the Internal Revenue Service has issued, in writing, to the taxpayer prior to January 1, 1991, an Internal Revenue Service ruling or a closing agreement expressly providing that such amount shall not be taken into account in determining the amount of any loss under section 165 or in determining the worthlessness or partial worthlessness of an asset for purposes of section 166, 585, or 593 of such Code.

(d) CONTRACT RIGHTS.—Nothing in this section shall be construed as affecting any private contractual rights and remedies that are otherwise available to parties of agreements for the provision of Federal financial assistance.●

By Mr. GORTON (for himself and Mr. ADAMS):

S. 584. A bill to clarify that certain greenhouses and nurseries that suffer damage as the result of severe storms or flooding in connection with a major disaster declared by the President on or after November 26, 1990, are eligible for loans under section 7 of the Small Business Act; to the Committee on Small Business.

DISASTER ASSISTANCE FOR GREENHOUSES AND NURSERIES

● Mr. GORTON. Mr. President, we in this great body attempt daily to discharge our responsibility to create legislation useful to American citizens. Regardless of our philosophical differences, I daresay that the individual aim of each of us is, simply, to help. We are sometimes greatly successful, and sometimes less so, though rarely for lack of caring.

A situation currently exists which is a result of less than fully successful legislation. This is not to say that it is bad legislation, only that it is incomplete. In its incompleteness, it fails a segment of our citizenry. I refer to the Small Business Act. This otherwise beneficial law makes businesses eligible for loans at low interest rates in the event of disaster.

By a well-intentioned but unfortunate quirk of semantics, though, disaster assistance for a certain category of business—nurseries and greenhouses—was omitted. Because the Department of Agriculture supposedly covers everything that grows, nurseries and greenhouses were presumed to be protected. As a result the SBA was prohibited from providing disaster assistance to any business with an agriculture component.

But nurseries and greenhouses are, for all practical purposes, businesses; they simply grow their inventory rather than manufacture or assemble it. They are unlike the typical agricultural enterprise which is owned and run largely by family members, enterprises that are the focus of the Department of Agriculture's assistance programs.

Nurseries and greenhouses are therefore ineligible for disaster assistance through either the Small Business Association or the Department of Agriculture.

Mr. President, this lack of coverage first came to my attention after continuous and extraordinary rainfall, snow and flooding wracked the nursery and greenhouse industries in Washington State during the last 2 weeks of November 1990. Fields and inventories were devastated.

Despite repeated appeals to various administrative agencies by my office and other Members of the Washington delegation, disaster assistance was denied to nurseries and greenhouses for lack of jurisdictional coverage. Many of these businesses now are facing tremendous pressures from financial institutions and creditors who themselves have been impacted by the storms and the slowing economy.

Mr. President, our predecessors did not intend to omit disaster assistance programs to these industries. Greenhouses and nurseries merely fall through an unintended legislative crack. Congress has recognized this inequity before, and in 1988 provided partial relief to nurseries devastated by drought. We should now complete the job. We should not let interagency disputes over jurisdiction prevent us from doing what is right.

Mr. President, I submit for the consideration of this body legislation that which will right an unintended omission. It is my hope and expectation that, even in the midst of weightier topics, my colleagues will seize the opportunity to perfect what might otherwise remain an almost good law.

Mr. President, I ask unanimous consent that immediately following my remarks, the text of the bill be printed in its entirety, as well as letters from Susan Engeleiter, Administrator of the Small Business Administration, and Roland R. Vantour, Under Secretary

for Small Community and Rural Development at the Department of Agriculture.

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

S. 584

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

SECTION 1. DISASTER ASSISTANCE FOR GREENHOUSES AND NURSERIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, a qualified greenhouse or qualified nursery shall be eligible for a loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).

(b) QUALIFIED GREENHOUSE OR QUALIFIED NURSERY.—For purposes of subsection (a), the term "qualified greenhouse or qualified nursery" means a business—

(1) engaged in the growth, production, distribution, wholesale or retail sales, of ornamental plants and flowers (including, but not limited to, a business whose operations are described in SIC code 0181); and

(2) which has suffered substantial economic injury as a result of a disaster determined to be a major disaster by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(c) STANDARD INDUSTRIAL CLASSIFICATION CODE.—For purposes of subsection (b), the term "SIC code" means a four-digit code assigned to an industry category in the Standard Industrial Classification Manual published by the Office of Management and Budget and in effect on November 26, 1990.

(d) EFFECTIVE DATE.—The provisions of this section shall apply to qualified greenhouses and qualified nurseries that suffer substantial economic injury as a result of a major disaster declared by the President on or after November 26, 1990.

SMALL BUSINESS ADMINISTRATION,
Washington, DC, January 10, 1991.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: Thank you for bringing to my attention your concerns about the nursery-growers in the State of Washington whose business operations have suffered damages in the recent floods. Specifically, you expressed a strong concern that some of these disaster victims are unable to obtain disaster assistance from any Federal agency. I share your concern that apparently no Federal agency is able to provide disaster assistance to a particular group of businesses with substantial flood losses.

The U.S. Small Business Administration (SBA) provides disaster loans to businesses of all sizes (and individual homeowners and renters) when a Federal disaster declaration is issued by the President or the Administrator of SBA.

However, the law prohibits SBA from making disaster loans to agricultural enterprises (with a limited exception for nurseries in drought disasters). The U.S. Department of Agriculture (USDA), primarily through the Farmers Home Administration (FmHA), makes emergency loans to agricultural enterprises for disaster losses. The Administration supports this policy on the grounds that any Federal disaster assistance for agricultural enterprises should be provided by USDA, which has the necessary expertise and resources to aid the agricultural sector. In the past, the law has provided for periods of dual disaster eligibility at FmHA and SBA. The result was duplication of effort, misunderstanding, and a poor performance of SBA's disaster loans to agricultural enterprises because SBA did not have the expertise and resources required to perform that specialized and complex task.

In the recent Washington state floods, declared a disaster by the President, some nurseries have suffered extensive flood losses. These nurseries are growers, and as such are agricultural enterprises. Thus, by law they are ineligible for SBA disaster loan assistance, and are eligible to seek FmHA emergency loan assistance.

Unfortunately, some of these nursery operations have been found by FmHA to be larger than family farms. As FmHA's authority to make emergency loans is restricted by law to family farms, these larger nursery operations are not eligible for FmHA assistance either. The small nurseries, which qualify as family farms, are eligible for FmHA emergency loans. Thus, the problem is not that FmHA cannot assist nurseries, but rather that the law restricts the FmHA program to aiding entities of a size smaller than many of the flood victims in Washington. The restriction limiting the FmHA program to family farm operations was added to the law governing that program in 1985.

In discussing this matter with me, you asked whether SBA could be of any help. Terri Claffey, your Legislative Assistant, has also discussed this matter with Alfred Judd, SBA's Acting Assistant Administrator for Disaster Assistance. Both Ms. Claffey and Mr. Judd participated in a meeting with representatives of FmHA and the Federal Emergency Management Agency (FEMA) on December 14, 1990.

In response to your concern, we have carefully reviewed this matter and explored the statutory limitations with SBA's General Counsel. Unfortunately, SBA is bound by the long-standing definition of agriculture used throughout the Federal Government and as reflected in the Standard Industrial Classification Manual issued by the Office of Management and Budget (OMB). That definition, also used by USDA, includes nurseries which are growers. SBA cannot depart from this definition for nurseries while the remainder of the Government continues to include them in the agricultural category. USDA assistance to nurseries is based on their inclusion within this definition of agriculture.

We believe the policy reflected in the law that SBA should provide disaster assistance to non-agricultural businesses and the USDA should provide disaster assistance to agricultural enterprises is sound. The obstacle encountered by some of the flood damaged nurseries is that they fall outside a recently imposed statutory limit governing the FmHA emergency loan program. While I am very sympathetic with the urgent needs of these nursery businesses, our law prohibits us from providing disaster aid. In our view, if agricultural enterprises larger than family farms are to be made eligible for Federal disaster assistance, then it would be appropriate for USDA, rather than SBA, to provide such assistance.

Please note that this discussion pertains only to the types of nurseries which are growers and which are therefore agricultural enterprises. Businesses calling themselves nurseries which are engaged primarily in the wholesale or retail sales of nursery products, such as florists or lawn and garden centers, but which are not primarily growers or engaged in other agricultural activities, are not agricultural enterprises and they are therefore eligible for SBA disaster loan assistance.

Thank you for your personal involvement in this matter.

Sincerely,

SUSAN ENGELEITER,
Administrator.

DEPARTMENT OF AGRICULTURE,
Washington, DC, February 22, 1991.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: Thank you for your letter on behalf of Mr. Carl F. Loeb, concerning eligibility requirements for Federal emergency disaster loan assistance.

The Farmers Home Administration (FmHA) is authorized by Congress to provide such assistance only to qualifying operators of family-sized farms. The Agency does make emergency loans to greenhouses and nurseries, provided they meet the mandated requirements. Operations must be on a scale that can reasonably be called "family-sized," and they must fit the description of an agricultural enterprise, which includes the actual growing of their plants.

Under this definition, nurseries and greenhouses that buy most or all of their plants from other suppliers for resale would not qualify. Because "family sized" is defined as having a substantial amount of farm labor requirements provided by the applicant and family members, it is doubtful that an operation the size of Mr. Loeb's, with approximately 60 employees, would qualify.

While we understand the concern you express, FmHA is unable to substantially change its loan approval guidelines without authority from the Congress.

Under its Business and Industry loan program, FmHA does guarantee loans to qualifying rural non-farm business enterprises. We are enclosing a brochure that describes this program. More information and assistance in completing an application are available to Mr. Loeb at the Agency's District Office, at the following address:

Farmers Home Administration, GSA Center, Room 1132, 15th and C Streets, SE., Auburn, Washington 98001, Telephone: (206) 931-7635.

We hope you find this information helpful in responding to your constituent.

Sincerely,

ROLAND R. VAUTOUR,
Under Secretary for Small Community and Rural Development.●

ADDITIONAL COSPONSORS

S. 21

At the request of Mr. CRANSTON, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Georgia [Mr. FOWLER], the Senator from Iowa [Mr. HARKIN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Illinois [Mr. SIMON], and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of S. 21, a bill to provide for the protection of the public lands in the California desert.

S. 33

At the request of Mr. MOYNIHAN, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 33, a bill to establish the Social Security Administration as an independent agency, and for other purposes.

S. 50

At the request of Mr. SYMMS, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Washington [Mr. GORTON], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Mississippi [Mr. LOTT], the Senator from Texas [Mr. GRAMM], and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of S. 50, a bill to ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible.

S. 105

At the request of Mr. D'AMATO, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 105, a bill entitled "The Drug Kingpin Death Penalty Act."

S. 127

At the request of Mr. CRANSTON, the names of the Senator from Hawaii [Mr. AKAKA], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 127, a bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to amend title 38, United States Code, to improve veterans' compensation, health-care, education, housing, and insurance programs; and for other purposes.

S. 152

At the request of Mr. COATS, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 152, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption to $4,000.

S. 153

At the request of Mr. COATS, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Mississippi [Mr. LOTT], the Senator from Washington [Mr. GORTON], and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 153, a bill to authorize States to regulate certain solid waste.

S. 167

At the request of Mr. RIEGLE, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Montana [Mr. BURNS], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 167, a bill to amend the Internal Revenue Code of 1986 to permanently extend qualified mortgage bonds.

S. 242

At the request of Mr. GLENN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 242, a bill to amend the Ethics in Government Act of 1978 to modify the rule prohibiting the receipt of honoraria by certain Government employees and for other purposes.

S. 246

At the request of Mr. LOTT, the names of the Senator from Utah [Mr. HATCH], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 246, a bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of members of the National Guard or reserve units of the Armed Forces will be allowable in computing adjusted gross income.

S. 264

At the request of Mr. COCHRAN, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 264, a bill to authorize a grant to the National Writing Project.

S. 267

At the request of Mr. REID, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 267, a bill to prohibit a State from imposing an income tax on the pension or retirement income of individuals who are not residents or domiciliaries of the State.

S. 268

At the request of Mr. PACKWOOD, the Senator from Alaska [Mr. STEVENS], was added as a cosponsor of S. 268, a bill to amend the Internal Revenue Code of 1986 to authorize a deduction for the expenses of adopting a special needs child and to amend title 5, United States Code, to establish a program providing assistance to federal employees adopting a special needs child.

S. 318

At the request of Mr. PACKWOOD, the names of the Senator from Alaska [Mr. STEVENS], and the the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 318, a bill to amend the Internal Revenue Code of 1986 to provide for employees of small employers a private retirement incentive matched by employers, and for other purposes.

S. 337

At the request of Mr. SIMON, the names of the Senator from Alabama [Mr. HEFLIN], and the the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 337, a bill to amend chapter 30 of title 38, United States Code, to provide active duty in connection with the Persian Gulf conflict be deemed to satisfy certain requirements for basic educational assistance under such chapter, to revise the requirements for such assistance applicable to such members, and for other purposes.

S. 349

At the request of Mr. BUMPERS, the names of the Senator from Tennessee [Mr. SASSER], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 349, a bill to amend the Fair Labor Standards Act of 1938 to clarify the application of such Act, and for other purposes.

S. 381

At the request of Mr. WALLOP, the names of the Senator from Idaho [Mr. SYMMS], the Senator from North Carolina [Mr. HELMS], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 381, a bill to amend the Internal Revenue Code of 1986 to promote economic growth and jobs creation by reducing social security taxes and capital gains taxes, by adjusting the deduction for depreciation to reflect inflation, and by encouraging savings.

S. 389

At the request of Mr. KERREY, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 389, a bill to amend the Federal Home Loan Bank Act to restructure the Resolution Trust Corporation Oversight Board and Board of Directors into a single governing entity.

S. 400

At the request of Mr. SYMMS, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 400, a bill to set aside tax revenues collected on recreational fuels not used on highways for the purposes of improving and maintaining recreational trails.

S. 402

At the request of Mr. JOHNSTON, the name of the Senator from Virginia [Mr. ROBB], was added as a cosponsor of S. 402, a bill to limit the jurisdiction of the Federal Energy Regulatory Commission over local distribution company wholesalers of natural gas for ultimate consumption as a fuel in motor vehicles.

S. 403

At the request of Mr. KOHL, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 403, a bill to clarify the intent of Congress with respect to establishment and collection of certain fees and charges.

At the request of Mr. WALLOP, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 403, supra.

S. 456

At the request of Ms. MIKULSKI, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 456, a bill to amend chapter 83 of title 5, United States Code, to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers to inspectors of the immigration and Naturalization Service, inspectors and canine enforcement officers of the U.S. Customs Service, and revenue officers of the Internal Revenue Service.

S. 481

At the request of Mr. SIMON, the names of the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 481, a bill to author-

ize research into the desalting of water and water reuse.

S. 486

At the request of Mr. MCCONNELL, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 486, a bill to require Federal departments, agencies, and instrumentalities to separate certain solid waste for recycling purposes.

S. 492

At the request of Mr. SIMON, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Tennessee [Mr. GORE], the Senator from Massachusetts [Mr. KERRY], and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of S. 492, a bill to amend the National Labor Relations Act to give employers and performers in the live performing arts, rights given by section 8(e) of such act to employers and employees in similarly situated industries, to give to such employers and performers the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes.

S. 514

At the request of Ms. MIKULSKI, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of S. 514, a bill to amend the Public Health Service Act, the Social Security Act, and other acts to promote greater equity in the delivery of health care services to women through expanded research on women's issues, improved access to health care services, and the development of disease prevention activities responsive to the needs of women, and for other purposes.

S. 548

At the request of Mr. CRANSTON, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 548, a bill to amend various provisions of law to ensure that services related to abortion are made available to the same extent as are all other pregnancy-related services under federally funded programs.

S. 565

At the request of Mr. WARNER, the names of the Senator from Illinois [Mr. DIXON], the Senator from Ohio [Mr. GLENN], the Senator from Tennessee [Mr. GORE], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 565, a bill to authorize the President to award a gold medal on behalf of the Congress to General Colin L. Powell, and to provide for the production of bronze duplicates of such medal for sale to the public.

SENATE JOINT RESOLUTION 8

At the request of Mr. BURDICK, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of Senate Joint Resolution 8, a joint resolution to authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week."

SENATE JOINT RESOLUTION 18

At the request of Mr. SIMON, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of Senate Joint Resolution 18, a joint resolution proposing an amendment to the Constitution relating to a Federal balanced budget.

SENATE JOINT RESOLUTION 46

At the request of Mr. STEVENS, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of Senate Joint Resolution 46, a joint resolution disapproving the action of the District of Columbia Council in approving the Assault Weapon Manufacturing Strict Liability Act of 1990.

SENATE JOINT RESOLUTION 69

At the request of Mr. RIEGLE, the names of the Senator from New York [Mr. D'AMATO], the Senator from North Dakota [Mr. CONRAD], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Joint Resolution 69, a joint resolution to designate the week commencing May 5, 1991, through May 11, 1991, as "National Correctional Officers Week."

SENATE JOINT RESOLUTION 79

At the request of Mr. D'AMATO, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from South Carolina [Mr. THURMOND], the Senator from Washington [Mr. ADAMS], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of Senate Joint Resolution 79, a joint resolution authorizing and requesting the President to disignate the second full week in March 1991 as "National Employ the Older Worker Week."

SENATE JOINT RESOLUTION 85

At the request of Mr. KASTEN, the names of the Senator from Alabama [Mr. SHELBY], the Senator from Montana [Mr. BURNS], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of Senate Joint Resolution 85, a joint resolution authorizing and requesting the President to appoint Gen. Colin L. Powell and Gen. H. Norman Schwarzkopf, Jr., United States Army, to the permanent grade of General of the Army.

SENATE CONCURRENT RESOLUTION 9

At the request of Mr. DECONCINI, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Concurrent Resolution 9, a concurrent resolution to encourage the Angolan Peace Talks.

SENATE RESOLUTION 71

At the request of Mr. SPECTER, the names of the Senator from Indiana [Mr. COATS], and the Senator from Illinois [Mr. DIXON] were added as cosponsors of Senate Resolution 71, a resolution to encourage the President of the United States to confer with the sovereign state of Kuwait, countries of the Coalition or the United Nations to establish an International Criminal Court or an International Military Tribunal to try and punish all individuals, including President Saddam Hussein, involved in the planning or execution of Crimes against peace, war crimes, and crimes against humanity as defined under international law.

SENATE RESOLUTION 72

At the request of Mr. KASTEN, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Resolution 72, a resolution to express the sense of the Senate that American small businesses should be involved in rebuilding Kuwait.

AMENDMENT NO. 23

At the request of Mr. ADAMS, his name was added as a cosponsor of amendment No. 23 proposed to S. 419, an original bill to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligations to depositors and others by the least expensive means.

SENATE RESOLUTION 74—PROHIBITING THE SOLICITATION OF CAMPAIGN FUNDS BY SENATE STAFF

Mr. HELMS submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 74

Resolved, That the second sentence of paragraph 1 of rule XLI of the Standing Rules of the Senate is amended by inserting after "any of the functions" the following: "except soliciting funds".

Mr. HELMS. For more than a year, I sat as a member of the Ethics Committee as it investigated five of our colleagues who were involved with Charles Keating. During that time, a number of very troubling facts came to my attention.

For example, I am troubled that Senate rule 41 allows up to three members of each Senate staff to solicit—I repeat: solicit—campaign funds, as long as the solicitation does not occur on Federal property. Solicitation of campaign funds on Federal property is still prohibited by section 607(a) of title 18 of the United States Code.

My point, of course, is that the taxpayers should not be forced to subsidize any candidate's campaign, whether the candidate is an incumbent or a challenger.

The legislation I am introducing will modify Senate rule 41 so that Senate staff will not be allowed to solicit campaign funds—under any circumstances.

Mr. President, Senate rule 41, as it now stands, states that no officer or employee of the Senate may "receive, solicit, be a custodian of, or distribute" campaign funds. But recognizing that contributions are often sent to Senate offices and must be handled by someone, rule 41 allows each Senator to designate three persons on his or her

staff—called political fund designees—to be exempt from the prohibition on soliciting, receiving, distributing, or acting as a custodian of campaign funds.

The effect of rule 41 is to allow the political fund designee to solicit campaign funds as long as the solicitation is not done on Federal property. I contend, Mr. President, that solicitation of funds by Senate staff should never have been permitted in the first place, and should be ended now.

Mr. President, on April 1, 1977, after 2 weeks of intense debate, the Senate adopted Senate Resolution 110, a comprehensive code of conduct that included a provision prohibiting any staff, including the political fund designee, from soliciting campaign funds. The resolution also requested the Committee on Rules and Administration to make further recommendations with respect to the use of Senate staff in campaigns.

In response to Senate Resolution 110, the Rules Committee issued Report No. 95-241 on June 8, 1977. In that report, the committee proposed that the Senate modify Senate rules to allow the political fund designee to solicit campaign funds in addition to receiving, distributing, and being the custodian of such funds.

That change was made without debate and by a voice vote on June 13, 1977.

Mr. President, the Rules Committee, in its report, gave several reasons for allowing staff to solicit funds. Let me quote from that committee report:

> The committee is not aware of any laws which prohibit individuals who are part of a Senator's staff from participating in a Senator's reelection campaign as long as they do not neglect their Senate duties, and the committee does not feel there should be such proscriptions. Furthermore, it is neither illegal nor a violation of Senate Rules for a member of a Senator's staff to work full time in political campaigns while on annual leave or vacation time or while on leave of absence from his or her Senate duties, and the committee feels there should not be any proscription of such actions.
>
> The Senate has, however, imposed a limitation on one area of political activity with respect to which Senate staff may become involved—the actual handling of campaign funds. Consequently, except for two designed [sic] assistants on a Senator's staff, all officers and employees of the Senate are prohibited from receiving, soliciting, holding or distributing campaign funds.
>
> Upon review of rule XLIX, the committee determined that to prohibit the solicitation of funds while permitting the other fundraising activities was both inconsistent and unworkable, as all these activities are integral parts of the same process. A rule permitting specific individuals to handle political funds has been part of the Senate Rules since 1968 (see old rule XLIII). New rule XLIX for the first time draws a line between receiving, being the custodian of and distributing political funds on the one hand and soliciting such funds on the other. The committee feels such a fine line is unrealistic and creates inevitable hairsplitting and uncertainties as to when or whether a solicitation may have occurred while the designated assistant is otherwise engaged in handling of campaign funds. This is unfair to the designated assistants, subjecting them to needless fear of violations. In those limited instances where a Senator designates an assistant to handle campaign funds, he or she should be permitted to engage in the entire fund-raising process.

Mr. President, I respectfully disagree with the reasoning of the Rules Committee, set out in Report 95-241, for allowing a Senator's designated staff to solicit funds. I think there is indeed a significant distinction between the receipt and handling of funds that happen to be sent to the office and the actual solicitation of political contributions from constituents.

I might add that for contributions that happen to be sent into my office, I have never allowed my political fund designee to do more than receive them and forward them promptly to my campaign committee in accordance with section 607 of title 18 of the United States Code.

Mr. President, one of the justifications for allowing our designated staff to solicit funds is that it might cause confusion for the staff to try to separate "solicitation" from the receipt and other routine activities that are allowed. According to the report, trying to separate these activities "is unfair to the designated assistant, subjecting them to needless fears of violations."

Mr. President, to the contrary, I believe that by continuing to allow staff members to solicit funds will lead to more confusion and may subject some staff to illegal behavior. Let me explain.

Section 607(b) of title 18 states that—

> The prohibition in subsection (a)—

That is, the prohibition on receiving or soliciting contributions on Federal property—

> shall not apply to the receipt of contributions by persons on the staff of a Senator * * * *provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a).* * * * (Emphasis added.)

Mr. President, as you see, this section of the criminal code places a specific condition on the exemption allowed for political fund designees. That condition provides that the political fund designee can legally receive campaign contributions only if they have not been solicited in a manner that directs the contribution to be sent to the Senate office.

If we continue to allow Senate staff members to solicit funds from constituents—who know them as members of our staff—even if they do so on their on time or during a leave of absence—many constituents will undoubtedly conclude that they should send contributions to staff members.

We are setting up our staff for a violation of section 607, the penalty for which a fine of up to $5,000 and imprisonment for up to 3 years. We are also setting ourselves up for very legitimate criticism from constituents who must deal with the same staff members who are soliciting campaign contributions from them.

That's asking for trouble, Mr. President. Moreover, there is no reason why Senate staff should be involved in campaign solicitations under any circumstances. That is why I am introducing this simple resolution to reinstate the prohibition that was adopted in 1977 as part of Senate Resolution 110.

Under my resolution, the political fund designee under rule 41 will still be allowed to "receive, be the custodian of, and distribute" campaign contributions, but will not be allowed to "solicit" contributions under any circumstances.

Mr. President, I ask unanimous consent that the text of rule 41 and 18 U.S.C. 607 be printed in the RECORD at this point.

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

SENATE RULE XLI

POLITICAL FUND ACTIVITY; DEFINITIONS

1. No officer or employee of the Senate may receive, solicit, be a custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election, of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to three[1] assistants to a Senator, at least one of whom is in Washington, District of Columbia, who have been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who are compensated at an annual rate in excess of $10,000, if such designation has been made in writing and filed with the Secretary of the Senate and if each such assistant files a financial statement in the form provided under rule XXXIV for each year during which he is designated under this rule. The Secretary of the Senate shall make the designation available for public inspection.

18 U.S.C. 607. PLACE OF SOLICITATION

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard fort, or arsenal. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contribu-

[1] Changed by section 2 of S. Res. 258 (October 1, 1987).

tions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

(As amended Jan. 8, 1980, Pub. L. 96-187, Title II, §201(a)(5), 93 Stat. 1367.)

AMENDMENTS SUBMITTED

RESOLUTION TRUST CORPORATION FUNDING ACT

CHAFEE (AND PELL) AMENDMENT NO. 24

Mr. CHAFEE (for himself and Mr. PELL) proposed an amendment to the bill (S. 419) to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation to meet its obligations to depositors and others by the least expensive means, as follows:

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

TITLE—FINANCIAL INSTITUTIONS FRAUD PROSECUTION ACT

SEC. 1. SHORT TITLE.

This title may be cited as the "Financial Institutions Fraud Prosecution Act of 1991".

SEC. 2. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.

Section 19(a) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)) is amended—

(1) in paragraph (1)(A)—

(A) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(B) by inserting after clause (i) the following:

"(ii) become or continue to be employed in any capacity by an insured depository institution;"; and

(2) in paragraph (2)(A)(i)(I) by inserting "1517," after "1344,".

SEC. 3. FEDERAL CREDIT UNION ACT AMENDMENTS.

Section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d)) is amended to read as follows:

"(d) PROHIBITION.—

"(1) IN GENERAL.—Except with prior written consent of the Board—

"(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, of has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

"(i) become, or continue as, an institution-affiliated party with respect to any insured credit union;

"(ii) become, or continue to be, employed in any capacity by an insured credit union;

"(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

"(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

"(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

"(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

"(i) an offense under—

"(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, or 1956 of title 18, United States Code; or

"(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

"(ii) the offense of conspiring to commit any such offense,

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

"(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

"(i) IN GENERAL.—On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

"(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

"(3) PENALTY.—Whoever knowingly violates paragraph (1) or (2) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.".

SEC. 4. CRIME CONTROL ACT AMENDMENTS.

(a) IN GENERAL.—The Crime Control Act of 1990 (P.L. 101-647, 104 Stat. 4789 et seq.) is amended—

(1) in section 2537(b)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) provide technical assistance and other appropriate resources to State prosecutors, State officials authorized to prosecute, or other law enforcement officials engaged in cases of fraud involving the collapse of any private deposit insurance corporation;"; and

(2) in section 2539(c)(2)—

(A) by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively; and

(B) by inserting a new subparagraph after subparagraph (F) as follows:

"(G) the Internal Revenue Service,".

(b) REPORT.—Section 2546 of the Crime Control Act of 1990 (P.L. 101-647, 104 Stat. 4885) is amended by adding at the end the following new subsection:

"(c) FRAUD TASK FORCES REPORT.—In addition to the reports required under subsection (a), the Attorney General shall submit a report to the Congress not later than March 1, 1992, containing the findings of the financial institutions fraud task forces established under section 2539 as they relate to the collapse of private deposit insurance corporations, together with recommendations for any regulatory or legislative changes necessary to prevent such collapses in the future.".

KERREY (AND OTHERS) AMENDMENT NO. 25

Mr. KERREY (for himself, Mr. PRYOR, Mr. EXON, Mr. BUMPERS, Mr. RUDMAN, Mr. MOYNIHAN, and Mr. DASCHLE) proposed an amendment to the bill S. 419, supra, as follows:

At the end of the bill, add the following:

SEC. . MANAGEMENT OF THE RESOLUTION TRUST CORPORATION.

(a) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by striking paragraphs (1) through (3) of subsection (a) and inserting the following:

"(1) IN GENERAL.—There is established the Board of Governors of the Resolution Trust Corporation.

"(2) FUNCTION.—The Board of Governors shall oversee and manage the Resolution Trust Corporation (hereinafter in this section referred to as the 'Corporation'). The Board of Governors shall be an 'agency' of the United States for the purposes of subchapter II of chapter 5 and chapter 7 of title 5, United States Code.

"(3) MEMBERSHIP.—

"(A) IN GENERAL.—The Board of Governors shall consist of 9 members as follows:

"(i) 5 independent members appointed by the President, by and with the advice and consent of the Senate, from among individuals with experience in banking, finance, real estate, and business management. Nominations to fill such positions shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(ii) The Secretary of the Treasury.

"(iii) The Chairman of the Board of Governors of the Federal Reserve System.

"(iv) The Secretary of Housing and Urban Development.

"(v) The Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation.

"(B) POLITICAL AFFILIATION.—Not more than 3 members appointed pursuant to clause (i) of subparagraph (A) shall be members of the same political party. No independent member of the Board of Governors shall hold any other appointed office during his or her term as a member.

"(C) CHAIRPERSON.—The Chairperson of the Board of Governors shall be designated from among the appointees under clause (i) of subparagraph (A) at the time of his or her nomination to the Board of Governors by the President. The Chairperson shall have the business experience necessary to govern the orderly disposition of the assets held by the Corporation.

"(D) QUORUM REQUIRED.—A quorum shall consist of 3 members of the Oversight Board appointed pursuant to subparagraph (A)(i).

"(E) TERM OF OFFICE.—The term of office of the members of the Board of Governors appointed pursuant to subparagraph (A)(i) shall be 5 years. Any vacancy in the Board of Governors shall be filled in the same manner as the original position was filled.".

(b) PROMPT APPOINTMENT.—The President is urged promptly to appoint all members of the Board of Governors of the Resolution Trust Corporation.

(c) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 21A of the Federal Home Loan Bank Act is amended—

(A) by striking "Oversight Board" each place it appears and inserting "Board of Governors"; and

(B) by striking subsection (b)(8).

(2) REFERENCES IN OTHER LAWS.—Any reference in any other provision of law to the Oversight Board of the Resolution Trust Corporation shall be deemed to be a reference to the Board of Governors of the Resolution Trust Corporation.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the date of enactment of this Act, except that—

(1) the Oversight Board of the Resolution Trust Corporation as constituted immediately preceding such date shall retain its power and authority as in effect on such date until such time as 3 of the nominees to be independent members of the Board of Governors have taken office;

(2) any individual nominated to be a member of the Oversight Board of the Resolution Trust Corporation shall be deemed to have been nominated to be a member of the Board of Governors of the Resolution Trust Corporation; and

(3) the conflict of interest regulations applicable to members of the Oversight Board shall apply to members of the Board of Governors.

(e) COMPENSATION OF BOARD OF GOVERNORS.—

(1) CHAIRMAN.—Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:

"Chairman, Board of Governors, Resolution Trust Corporation.".

(2) MEMBERS.—Section 5313 of title 5, United States Code, is amended by striking "Oversight Board" and inserting "Board of Governors".

BREAUX AMENDMENT NO. 26

Mr. BREAUX proposed an amendment to the bill S. 419, supra; as follows:

At the end of the bill insert the following new section:

"SEC. . STUDIES OF THE USE OF TAX INCENTIVES TO STIMULATE THE SALE OF RTC AND FDIC REAL PROPERTIES.

"(a) IN GENERAL.—The Comptroller General of the United States, the Secretary of the Treasury and the Director of the Congressional Budget Office shall each conduct separate studies on the use of a tax credit to stimulate the sale of distressed, income-producing property owned in conservatorship or receivership by the Resolution Trust Corporation and the Federal Deposit Insurance Corporation.

"(b) TOPICS.—As part of the studies required under subsection (a), the Comptroller, the Secretary of the Treasury and the Director of the Congressional Budget Office shall investigate, review and evaluate the feasibility of a two-year trial RTC and FDIC tax credit program commencing on January 1, 1992 that would include the following features—

"(1) a $500,000,000 annual cap on tax credits offered by the RTC and FDIC;

"(2) a tax credit with a present value of up to 80 percent of the purchase price plus the cost of necessary rehabilitation and completion for the acquisition of property owned by the RTC and FDIC;

"(3) the amount of credit would be determined and allocated by the RTC or the FDIC, as the case may be and could not exceed the amount determined to be necessary to sell the property and could not exceed the amount of capital contributed by the purchaser of the property;

"(4) a credit period that would be for 5 years beginning with the taxable year in which the property is purchased and would be earned in 5 equal installments;

"(5) a requirement that upon sale of the property, 20 percent of any profits shall be paid directly back to the RTC and FDIC with the remaining profits would be taxed at the appropriate capital gains rate;

"(6) a requirement that ownership of the property purchased by a private taxpayer under the credit must be maintained for a period of 5 years in order to continue to receive the credit and sale or refinancing of property before the end of the credit period would not trigger recapture but would cause the cessation of any future tax benefits;

"(7) a requirement that funds generated by the credit would be paid directly to the RTC and FDIC;

"(8) a requirement that the RTC or FDIC would have to certify it exercised reasonable efforts to sell property in inventory at a price permitted by law without offering the credit and certify that the cost of holding the property will be minimized by such sale;

"(9) a requirement that the credits could be used to offset the lesser of $50,000 or 50 percent of tax liability on non-passive income for individuals; for corporations, the credit would be subject to the rules of the general business credit including the maximum amount of income tax liability that may be reduced by a general business credit for any one year;

"(10) a requirement that the credit would not be considered a preference item under the Alternative Minimum Tax (ATM) and may not be used to offset tax due and owed under an AMT calculation;

"(11) that the program would not apply to property purchased from the RTC or FDIC after December 31, 1993, except pursuant to an earlier binding contract;

"(12) a prohibition against officers or directors of institutions in RTC or FDIC receivership or conservatorship and former owners of the property with respect to which a credit is to be allocated from receiving a credit under this program; and

"(13) a requirement that the RTC Oversight Board and FDIC would publish additional guidelines as appropriate for the RTC's and FDIC's use of the tax credit.

"(c) FACTORS.—In preparing the studies required in subsection (a) and (b), the Comptroller General, the Secretary and the Director shall consider the following factors:

"(1) the net budget impact of any proposal to utilize tax credit to sell RTC- and FDIC-owned properties:

"(2) the stimulative effect that a tax credit will have on the disposition of RTC and FDIC properties;

"(3) RTC and FDIC ability to dispose of properties without tax incentives;

"(4) the carrying cost of properties held by the RTC and FDIC;

"(5) the effect on local real estate markets;

"(6) the effect real estate markets have on national economic growth;

"(7) the effect such a tax credit may have on economically distressed regions; and

"(8) whether the revenue to the RTC and FDIC would be enhanced if sold with the tax credit compared to the alternative of holding the property in inventory.

"(d) FINAL REPORT.—Not later than 60 days from the date of the enactment of this Act, the Comptroller General, the Secretary of the Treasury and the Director of the Congressional Budget Office shall submit to the Committee on Finance and Banking, Housing and Urban Affairs of the United States Senate and the Committees on Ways and Means and Banking, Finance and Urban Affairs of the United States House of Representatives their final reports containing detailed statement of findings made, and conclusions drawn from the studies conducted under this section, including recommendations for appropriate administrative and legislative action.".

SPECTER AMENDMENT NO. 27

Mr. SPECTER proposed an amendment, which was subsequently modified, to the bill S. 419, supra, as follows:

SEC. .

(a) The Congress finds that—

The International Military Tribunal at Nuremberg held the initiation of a war of aggression to be "not only an international crime (but also) the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole;"

On August 2, 1990 and without provocation, Iraq initiated a war of aggression against the sovereign state of Kuwait;

The Charter of the United Nations imposes on its members the obligations to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" and to "settle their international disputes by peaceful means;"

The leaders of the Government of Iraq, a country which is a member of the United Nations, did violate this provision of the United Nations Charter;

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) imposes certain obligations upon a belligerent State, occupying another country by force of arms, in order to protect the civilian population of the occupied territory from some of the ravages of the conflict;

The public testimony of victims and witnesses has indicated that Iraqi officials violated Article 27 of the Fourth Geneva Convention by their inhumane treatment and acts of violence against the Kuwaiti civilian population, including women;

The public testimony of victims and witnesses has indicated that Iraqi officials violated Articles 31 and 32 of the Fourth Geneva Convention by subjecting Kuwaiti civilians to physical coercion, suffering and extermination in order to obtain information;

Article 146 of the Fourth Geneva Convention states that persons committing "grave breaches" are to be apprehended and subjected to trial;

"Grave breaches" are defined to include: "willful killing, torture or inhuman treatment * * *, willfully causing great suffering or serious injury to body or health, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity;"

Both Iraq and Kuwait are parties to the Fourth Geneva Convention;

On several occasions the United Nations Security Council has found Iraq's treatment of Kuwaiti civilians violative of international law;

In Resolution 665, adopted on August 25, 1990, the United Nations Security Council deplored "the loss of innocent life stemming from the Iraqi invasion of Kuwait;"

In Resolution 670, adopted by the United Nations Security Council on September 25, 1990, it condemned further "the treatment by Iraqi forces on Kuwaiti nationals and reaffirmed that the Fourth Geneva Convention applied to Kuwait;"

In Resolution 674, the United Nations Security Council demanded that Iraq cease mistreating and oppressing Kuwaiti nations in violation of the Convention and reminded Iraq that it would be liable for any damage or injury suffered by Kuwaiti nationals due to Iraq's invasion and illegal occupation;

The Geneva Convention Relative to the Treatment of Prisoners of War (the Third Geneva or POW Convention) sets forth standards for the treatment of civilians and incapacitated combatants during times of hostilities;

Iraq is a party to the POW Convention;

There is evidence and testimony that Iraq violated articles of the POW Convention by

its physical and psychological abuse of military and civilian POW's including members of the international press;

There is evidence and testimony that Iraq violated articles of the POW Convention by placing POWs in solitary confinement, failing to shelter POW's against air bombardment and denying POW's contact with the outside world;

In Resolution 667, adopted on September 16, 1990, the Security Council expressed "outrage" at Iraq's abduction of several persons from diplomatic premises in violation of the Vienna Conventions on Diplomatic and Consular Relations;

In violation of the Fourth Geneva Convention, Iraq did fire missiles on Israel with the intent of making it a party to war and with the intent of killing or injuring innocent civilians;

Iraq has inflicted grave risk to the health and well-being of innocent civilians in the region by its willful setting on fire of Kuwaiti oil wells and its willful spilling of oil into the Persian Gulf, resulting in the mass pollution of air an water;

For all of the above incidents, it is not a defense that an individual in committing such heinous acts acted under orders of higher government officials (International Military Tribunal (Nuremberg) Judgment and Sentences, 41 A.J.I.L. 172 (1946) ("That a soldier was ordered to kill or torture in violation of international law of war has never been recognized as a defense to such acts of brutality.");

The Nuremberg tribunal provision which held that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who comit such crimes can the provisions of international law be enforced" is as valid today as it was in 1946;

A failure to try and punish leaders and other persons for crimes against international law establishes a dangerous precendent and negatively impacts the value of deterrence to future illegal acts.

(b) It is the sense of the Congress that the President should confer with Kuwait, other Member Nations of the Coalition or the United Nations to establish an International Criminal Court or an International Military Tribunal to try and punish all individuals involved in the planning or execution of the above referenced crimes, including Saddam Hussein.

(c) The Congress further finds that any Iraqi use of chemical weapons against insurgents inside Iraq should be consider a war crime and that those responsible should be held accountable.

(d) In the event Iraq shall use chemical weapons, it is the further sense of the Congress that the President should seek prompt and effective United Nations Security Council action to stop such use and to punish those responsible.

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, March 21, 1991, beginning at 2:30 p.m., in room SD-366, of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills:

S. 292, to expand the boundaries of the Saguaro National Monument;

S. 363, to authorize the addition of 15 acres to Morristown National Historical Park;

S. 545, to authorize the additional use of land in Merced County, CA; and

S. 549, to amend the Wild and Scenic Rivers Act by designating the Lower Merced River in California as a component of the National Wild and Scenic Rivers System.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact David Brooks of the subcommittee staff at (202) 224-9863.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, the Committee on Rules and Administration will meet on Wednesday, March 20, 1991, at 9:30 a.m., in SR-301, to mark up a Senate campaign finance bill. I would also like to remind Members and the public that prior to this markup, the Rules Committee will hold three hearings on the subject of campaign finance. On Thursday, March 7, Wednesday, March 13, and Thursday, March 14, 1991, at 9:30 a.m. on each date, the committee will meet in SR-301, Russell Senate Office Building, to receive testimony on congressional election campaign finance reform proposals. Those hearings will focus on legislation referred to the Rules Committee.

For further information regarding the markup on March 20, please contact Mr. Jack Sousa, chief counsel of the Rules Committee, on 224-5648.

Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Thursday, March 21, and Wednesday, April 10, 1991, at 9:30 a.m. on each date, to receive testimony on S. 250, the National Voter Registration Act of 1991.

Individuals and organizations interested in testifying or submitting a statement for the hearing record are requested to contact Tom Zoeller of the Rules Committee staff on 224-0279. For further information regarding these hearings, please contact Mr. Zoeller.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and for the public a change in the schedule of hearings concerning S. 341, the National Energy Security Act of 1991, before the Committee on Energy and Natural Resources. The hearing schedule announced on Tuesday, February 19, 1991, had indicated that on Monday, March 18, 1991, at 2 p.m., the full committee would hold a hearing on title V of S. 341 pertaining to coal and the applicability of new source review to existing electric steam generating units—WEPCo.

The change in schedule is as follows: The hearing on March 18, 1991, will address only section 5101 of S. 341 pertaining to the applicability of new source review to existing steam electric generating units—WEPCo. As previously announced, the hearing will take place in room SD-366 at 2 p.m. For further information, please contact Don Santa at (202) 224-4820.

The hearing on subtitle A of title V of S. 341, pertaining to coal and coal research, has been rescheduled for Tuesday, March 19, 1991, at 2 p.m. This hearing will be held by the Subcommittee on Energy Research and Development and will take place in room SD-366. For further information on the March 19 subcommittee hearing, please contact Mary Louise Wagner at (202) 224-7569.

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

Mr. WIRTH. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Energy Regulation and Conservation.

The hearing will take place on Tuesday, March 19, at 2 p.m., in room SD-430 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on provisions of title III of S. 341 regarding building energy efficiency standards and ratings.

For further information, please contact Leslie Black or Allen Stayman, at (202) 224-4756.

Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Energy Regulation and Conservation.

The hearing will take place on Thursday, March 21, at 2 p.m., in room SD-430 of the Senate Dirksen Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the provisions of subtitle A of title IV of S. 341 regarding the export of renewable energy and energy efficiency technology.

For further information, please contact Leslie Black or Allen Stayman, at (202) 224-4756.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be au-

thorized to meet during the session of the Senate on Wednesday, March 6, 1991, at 9:30 a.m., to receive testimony on the projected shortfall in the Presidential Election Campaign Fund. Witnesses include the following: representatives of the Federal Election Commission; Mr. Fred Wertheimer of Common Cause; Mr. Thomas Schatz of Citizens Against Government Waste; and Mr. Roy A. Schotland, Professor of Law, Georgetown University Law Center.

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

COMMITTEE ON SMALL BUSINESS

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Wednesday, March 6, 1991, at 2 p.m. The committee will hold a confirmation hearing on the nomination of James F. Hoobler to be Inspector General of the Small Business Administration.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, March 6, 1991 at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, March 6, at 2:30 p.m. to hold a hearing on Soviet disunion: the American response.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. RIEGLE. Mr. President, I ask unanimous consent that the full committee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m. March 6, 1991, to consider the committee's fiscal year 1992 views and estimates report.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Wednesday, March 6, 1991, at 9:30 a.m., on the subject: the purchase and use of counterfeit and substandard parts.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, March 6, 1991, at 10 a.m., for a hearing on David Kessler, Commissioner of the Food and Drug Administration.

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

COMMITTEE ON ARMED SERVICES

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session during the session of the Senate on Wednesday, March 6, 1991, at 2 p.m., to receive testimony from the unified commands oriented to mobilization and transportation of conventional forces on their contributions to Desert Shield/Desert Storm and on the impact of the fiscal years 1992–93 Defense authorization request and fiscal years 1992–97 future year Defense plan on the forces under their commands.

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

ADDITIONAL STATEMENTS

TRIBUTE TO FORMER SENATOR BILL ARMSTRONG

• Mr. BROWN. Mr. President, I rise today to pay tribute to a man who many have called one of the Senate's true statesmen, former Colorado Senator Bill Armstrong.

His announcement in February 1989 that he would not seek a third term in the Senate surprised and saddened all of us.

Bill Armstrong served the public with great distinction for 28 years; 10 years in the Colorado Legislature, 6 in the House of Representatives and 12 years in the U.S. Senate. He is a man of strong principles, a man who backs his convictions with action. He is a man who worked in the political process without ever losing sight of those principles.

Bill was already a successful businessman and broadcaster when elected to the Colorado House of Representatives in 1962. At the age of 25, Bill was one of the youngest ever elected to the legislature. At the age of 27, Bill Armstrong was elected to the Colorado State Senate and in 1969 became the youngest majority leader ever in the Colorado State Senate. In the legislature, Bill did not force himself into every debate. However, when he rose to speak, he quickly acquired a reputation as the member of the chamber with the most complete knowledge of the issue.

Bill Armstrong always has believed in the ideal of the citizen legislator. As he said, "I've always viewed myself as a citizen legislator * * * serving in Congress for a time, but always with the firm intention of returning to private life." After 12 years in the Senate, Bill Armstrong can return to private life with a fulfilling knowledge of the profound impact he has had on the Senate and the Nation as a whole.

Senator Armstrong established a reputation as a intellectual, issue-passionate legislator. With courage and conviction, he became an articulate advocate of economic issues by serving on both the Senate Budget and Finance Committees. Dubbed the "Father of Indexing," Bill Armstrong was the author of the income tax indexing provision of the 1981 tax reduction bill.

In the late 1970's, America's work force received cost of living raises based on the exorbitantly high rate of inflation. Since income tax brackets remained the same, these inflation-based salary increases pushed taxpayers into higher tax brackets, thus diminishing their initial pay raise. Senator Armstrong recognized the unfairness and helped pass legislation which indexed income tax brackets to the rate of inflation. Indexing now is regarded as one of the most important tax reforms in decades and is expected to save taxpayers about $100 billion during the next 3 years alone.

Senator Armstrong also was a champion in protecting America's senior citizens. Bill Armstrong was appointed by Ronald Reagan to the President's National Commission on Social Security Reform, where he focused attention on the long-ignored financing problems of the Social Security fund. He fought efforts to increase Social Security tax rates as a solution to the system's fiscal imbalance.

In his last years in the Senate, Senator Armstrong dedicated himself to repealing the Social Security "earnings penalty," which unfairly reduces Social Security benefits for older Americans who continue to work. Under the current law, older citizens have their Social Security benefits reduced by $1 for every $2 earned in salary above a certain level. Armstrong rightly argued that the Government was discouraging one of our most productive sectors of the economy from working.

Bill Armstrong also became one of the Senate's leaders for human rights. Concerned for the millions of victims of forced labor in the Soviet Union, Bill gained Senate passage of legislation requiring Federal enforcement of a U.S. statute banning imports of products produced with forced labor. He also led the successful effort to terminate Romania's most-favored-nation trading status with the United States due to the dismal record of Romanian human rights abuses.

When the people of Lithuania cried out for independence and the Soviet Union responded with a blockade, Bill Armstrong made sure the United States was there to help. His resolution, which encouraged the people of Lithuania to achieve independence and warned the Soviets that any use of

force would have severe repercussions, passed the Senate unanimously. A few months later, Senator Armstrong again championed the cause of Baltic independence when the Senate passed a relief bill which provided emergency medical supplies, and food and water purification supplies to the blockade-starved people of the Baltics.

The plight of Chinese nationals seeking asylum in the United States following the Tiananmen Square massacre brought Senator Armstrong's quick action. He sponsored an amendment to help Chinese nationals fleeing the Communist Government's population control policies of forced abortion, infanticide, and sterilization. While the legislation was ultimately vetoed, the President promised to implement the bill and the Armstrong amendment by regulation.

For the men and women of the U.S. armed services, Armstrong became a vocal advocate of assisting those who devote their lives to protecting America and her ideals. He was the Senate's chief proponent of the restoration of the GI bill, which provided educational benefits to ex-service people and forcefully backed legislation enacted to make the GI bill benefits a permanent program.

Bill Armstrong also committed himself to remembering those Americans who served in the Korean war. In 1989 and 1990, he introduced and won passage of resolutions which designated the last week in July as the "National Week of Recognition and Remembrance for those who served in the Korean war." Senator Armstrong also helped guide through legislation to construct a Korean War Memorial in the Nation's Capital as a permanent tribute to America's men and women who fought so bravely in what many call "America's Forgotten War."

In June 1990, the Senate passed legislation introduced by Bill Armstrong which granted a national charter for The Retired Enlisted Association, a nonprofit retired military veterans organization based in Aurora, CO. Founded in 1963, the TREA has now grown from a regional organization of 1,300 members in 1981, to a present 59,000 members in all 50 States. The organization protects the rights and benefits of retired military personnel, provides a scholarship fund, and manages veterans assistance programs. Final approval of the charter now will come before the 102d Congress.

Bill Armstrong was the prime sponsor of the sodbuster bill, which removed Government incentives for plowing fragile grasslands. The legislation was designed to address the problem of millions of acres of precious topsoil blowing away, partly because the land was being plowed just to receive Federal farms benefits. Senator Armstrong's devotion to the issue gained Senate approval and was endorsed by almost every major agricultural and environmental organization. In fact, Bill was awarded the title, "Soil Conservationist of the Year" by the Colorado Wildlife Federation.

Another piece of legislation Senator Armstrong won passage for was the historic Family Welfare Reform Act of 1988. He was an articulate advocate of permitting work to be part of a welfare program which enables recipients to become productive by replacing welfare checks with pay checks.

While I had the privilege in the House of Representatives of working with Senator Armstrong on some of these issues, I envy those in this Chamber who had the opportunity to serve with Bill Armstrong in the U.S. Senate. His principled defense of American values and traditions while in Congress have earned him the deep respect and admiration of all who knew him. I always have known Bill Armstrong as a leader. He challenges us to reexamine our perspectives and to passionately dedicate ourselves to those issues we hope to champion.

Bill Armstrong never lost a general election campaign. He consistently led the Republican ticket and retired as the most electable Republican in Colorado history.

What I admire most about Bill Armstrong was the manner in which he conducted himself. He had the ability to take firm positions and then present them with rationality and affability in the most rancorous political debate. His first question in examining an issue was always what is fair and what is right. Bill Armstrong, you served the people of Colorado and the Nation with integrity and humility. You have set a standard of service for which all Coloradans can be proud.●

NOW THE REALLY TOUGH JOB: WINNING THE PEACE

● Mr. SIMON. Mr. President, I rejoice with all Americans at the release of our prisoners of war, and I look forward to hearing President Bush outline his thoughts for the next steps to take toward a lasting peace in the Middle East. In a column I write for newspapers in my State, I offer my perspective on some of the hurdles we face in that troubled part of the world. I ask to have it reprinted in the RECORD.

The column follows:

NOW THE REALLY TOUGH JOB: WINNING THE PEACE

(By U.S. Senator Paul Simon of Illinois)

The war to free Kuwait is over. Now we must win the peace, in some ways a more difficult task than winning the war.

Saddam Hussein was a disaster as a military leader, but he managed to convey to many in the Moslem world that he was the true Moslem and Arab leader who was standing up to the Christian/Jewish West. He actually belongs to a secular group, but his speeches took on a religious ring that lacked genuineness to those who know his background, as too few did.

Anti-U.S. demonstrations took place in most Moslem countries. The United States comes out of the war with problems in that part of the world, with the exception of those Moslem nations that actively supported us.

Fortunately, some of these nations are in the immediate area where peace and stability must be created.

A few Arab leaders have hinted publicly that after this war a peace accord with Israel should be developed. More Arab leaders have whispered that quietly, and whether they will stand up with courage at the appropriate time, we may soon discover.

I have urged Secretary of State James Baker to approach the situation much as you would a labor-management struggle. First, get the two sides to agree on some things, establishing trust, and then move on to the more difficult issues after an element of understanding has been created.

How can that be done?

Let me suggest this scenario:

First, encourage Israel and the Arab nations to work together on finding less expensive ways of converting salt water to fresh water. The most explosive long-term problem in the Middle East is water. They all know that.

Egypt, for example, lives on 4 percent of its land. As the population of Egypt mushrooms, Egypt's water supply stays the same. That obviously is a volatile situation.

In my trip to Saudi Arabia, Israel and Egypt in December, the leaders of those countries talked much more about water than about oil.

On water, we should be able to get Israel and all the Arab nations working together.

Second, Israel and the Arab nations have a common interest in agreeing on a a system for a verifiable method of eliminating nuclear, chemical and biological weapons from that area of the world.

Third, President Bush should name someone of the stature of former Secretary of State George Shultz as a roving ambassador who will devote full time to the search for peace and reconciliation in the Middle East.

If we can encourage Israel and the Arab nations to work on building trust and reducing fears of each other, then we can move to the more difficult problem of people and territory: the Palestinian question.

To jump to the toughest question first probably is not wise. But succeeding will take aggressive leadership by the United States.

If we provide leadership for war, but not for peace, we will have dishonored the memory of those courageous people who fought this war.●

AMENDMENTS TO S. 341, THE NATIONAL ENERGY SECURITY ACT OF 1991

● Mr. BINGAMAN. Mr. President, on February 28, I introduced a series of amendments to the natural gas regulatory provisions of S. 341, the National Security Act of 1991. In my statement, I referred to a paper by Mr. George Hall which attempts to quantify the costs associated with regulatory delays in the approval of proposed natural gas pipeline facilities. That paper inadvertently was omitted from the RECORD. Mr. President, I ask that a copy of Mr.

Hall's paper be reprinted in today's RECORD.

The material follows:

ECONOMIC COSTS OF REGULATORY DELAY

(By George R. Hall)

I. INTRODUCTION

Consider the following judgment rendered by an eminent authority on regulation:

"Inordinate delay characterizes the disposition of adjudicatory proceedings before substantially all of our regulatory agencies.* * *"

The renowned expert then focused in specifically on the regulation of natural gas and stated that:

"Delay after delay in certifications and the prescription of rates has cost the public millions of dollars."

Who am I quoting? Judge John Landis. The excerpts are from the famous Landis Report to President-Elect John F. Kennedy in 1960.[1]

In the last 30 years, when all is said and done, much more has been said than done about the problem Judge Landis emphasized to President Kennedy. The problem still persists and the Federal Energy Bar Association is to be commended for refocusing our attention on reform of the regulatory process. As Judge Landis pointed out three decades ago, delay is a very costly matter. The economic benefits of speeding up are substantial. I hope today to impress you with just how substantial they are.

It is easy to talk generally about the costs of regulatory delay. However, it is not easy to produce quantitative measures of these costs. First, one person's "delay" is another person's "due process." Lucky for me, other panel members will deal with this problem.

I will focus on another reason that we tend to avoid putting numbers with the time required to obtain regulatory decisions. Many of the cost effects are indirect; they don't show up on corporate books. They require estimates, and lawyers and economists can always argue about another person's estimates.

Nonetheless, regulatory delay levies real demands upon our economic resources and these requirements can be quantified. Even conservative estimates produce astounding totals that are so large that, I believe, they should give a sense of urgency to the task of reforming the regulatory system in order to produce speedier decisions and a faster resolution of disputes.

Delay in any regulatory decision has costs. However, I will focus on applications for certificates of public convenience and necessity.

The press reports that there are 37 significant pipeline projects pending before the Federal Energy Regulatory Commission (FERC). The nine largest, if approved, would move 1.2 bcf per day. If contested, each of these is likely to take a substantial time until a decision is rendered. The same report quotes a Congressional study that concluded that the major contented certificate applications that were approved by the FERC in 1990 required an average of 693 days to process.[2] A significant improvement in this record would bring substantial shifts in fuel usage with, as I shall demonstrate, significant beneficial resource impacts.

II. A METHODOLOGICAL FRAMEWORK

We need to begin our examination of the costs of delay by distinguishing various ways that delay requires our society's resource. One way is the direct regulatory expenses that show up on the corporate accounts of regulated firms and the budgets of governmental agencies. The fees of FEBA members and consultants, like me, that support you come immediately to mind. I will not, however, focus further on these direct costs. They are well known. And, in any event, many might argue that contributing to the well-being of energy lawyers and economic consultants advances the public betterment, no matter how large a fraction of the gross national product might be required. Many who might argue this position might be lawyers and consultants, but who would be foolhardy enough to argue with their assessments of the public good.

In addition to the direct costs, economic adjustment costs should be considered.

An application for a certificate of public convenience and necessity is a request for an economic change. If approved by the regulators, presumably our economy has become more efficient. Thus, one can think of a certificate approval as moving our economy from a point of disequilibrium to a point closer to a state of optimal efficiency. Thus, a delay in a decision can be thought of as prolonging the state of economic inefficiency. The analytic task is to measure the gap between the economic situation before the new project and the economic situation after the new project.

With regard to a major new supply project, such as a pipeline that will allow the substitution of a new supply of gas for oil or for a more expensive source of gas, three disequilibrium costs come immediately to mind. These are:

Balance of payment costs.

Costs of using a less efficient fuel.

Strategic costs.

Finally, there is another cost category that I would like you to consider are environmental costs. In addition to the costs that show up on consumers' bills, there is a category of hidden costs (environmental costs) that is highly relevant. Pollution has serious adverse impacts on our society, although, usually, these costs are hidden. Environmental damage is a real cost, nonetheless, and it should be figured into our calculus of the costs of the regulatory process, and this can be done.

FERC delays in the certification process directly result in external costs that otherwise could be avoided. Because the combustion of natural gas can displace fuel oil, a proceedings delay can result in otherwise avoidable excessive emissions of pollultants such as carbon dioxide, sulphur dioxide, ntirous oxide compounds and particulates. While it is relatively easy to estimate the net change in emissions attributed to substituting natural gas for oil, placing a dollar value on pollutants is much more difficult. The root of the problem lies in the fact that property rights to the use of certain economic resources, such as the atmosphere, are largely undefined and the effects of incremental emissions are difficult to define. By contrast, owning a hole in the ground in which EPA has approved as being suitable for disposal of hazardous wastes results in very clear disposal costs for the firm generating toxic waste. consequently, an electric utility burning a fossil fuel discharges its pollutants into the atmosphere at no cost to itself. Unfortunately, as we are all aware, the cost of air pollution does manifest itself in such forms as lung and respiratory disease, acid rain destruction of lakes and forests and possibly global warming.

In addition to the three types of costs, there are a number of other possible economic effects that we might decide to quantify. Some are the "second-order effects or indirect effects of the direct substitution of a less costly supply source of a more costly supply source. For example, substitution of gas for oil will have some impact on the demand for oil and, thereby, will affect the price of oil. Also, we might wish to examine income-distribution impacts. It is very difficult, but not impossible, to produce creditable estimates of such effects, and I have not attempted such an analysis for our meeting today. I do want to point out, however, that such impacts could be factored into estimates of delay, and, because I have not done so, my estimates probably underestimate the economic costs of regulatory delay.

III. AN EXAMPLE: THE FLORIDA GAS TRANSMISSION PROCEEDING

Background

The economic significance of delay can be illustrated by examining the application of the Florida Gas Transmission (FGT) System for a FERC certificate to expand that system. This proceeding is, I am sure, familiar to all here. Many other examples might have been used, but the FGT case provides an apt illustration.

On 15 June 1990, the FERC approved an FGT proposal to offer a complete restructing of its services, expansion of capacity, open-access transportation and a mechanism to recover take-or-pay costs incurred during the transition. The Commission's action ended some four years of contested proceedings. In April 1986, FGT transmission applied for a certificate of public convenience and necessity authorizing additional capacity to deliver 100,000 Mcf/day for which it received approal in early 1987. FGT subsequently proposed a $160 million expansion to deliver another 100,000 Mcf/d of natural gas. However, for whatever reasons, final approval took almost four years. As a result, the expansion will not be completed until late 1991. What would have been the economic advantage if the FERC had been able to reach its decision one year earlier, that is, in three years rather than foul?

Analysis

To estimate the environmental and economic benefits of shortening the FGT decision process by a year, I have made several simplifying assumptions. In any situation where one were to use such figures as the basis for a decision, it would be desirable to try to avoid having to make such assumptions; but since my purpose is to develop an illustrative example, I believe these assumptions are justifiable shortcuts. I assume that:

All 100,000 Mcf/d of natural gas displaces residual fuel used to generate electricity.

Florida's capacity to import electricity through existing transmission lines is constrained.

Downward pressures on fuel oil prices due to increased supplies of natural gas do not occur.

The introduction of new gas supplies into Florida does not affect existing gas prices.

One Btu of residual fuel oil and one Btu of natural gas each generate the same amount of kilowatt hours.

Balance of Payment Costs

If the FGT certificate had been issued a year earlier, Florida utilities would have been able to avoid importing 5.7 million barrels of residual fuel oil at a total cost of $130 million. In other words, the United Sates would have been able to reduce its balance of

[1] Landis, James McCauley, "Report on Regulatory Agencies to the President-Elect," Washington, D.C., US GPO, 1960.

[2] "Under Fire, FERC Seeks to Speed Pipeline Permitting," *Oil and Gas Journal*, Nov. 5, 1990, p. 11.

trade deficit payments over the 12-month period by $130 million.

Security Costs

A deployment of 400,000 U.S. troops to the Persian Gulf is compelling evidence that a security premium should be added to the cost of each barrel of oil that the United States imports. I think the security-premium estimate of my colleague, Bill Hogan, is very sound. The estimate in 1985 dollars is $9.56 per barrel. This translates into $11.23 per barrel in 1990 dollars. This would amount to $64 million for a non-year speed-up in the FGT proceeding.

Excessive Fuel Costs

Because natural gas supplies into the state of Florida have not met, and are not expected to meet, demand for some time, electric utilities, as well as other consumers of fossile fuels, have had to burn a more expensive substitute fuel. Had the additional 100,000 Mcf/day of natural gas been available 12 months earlier, consumers could have avoided paying the incremental difference between natural gas and residual fuel oil. Without having analyzed the use profiles of the major gas customers and their economic dispatch orders, a rough estimate is that excessive fuel costs in Florida for a one-year period would amount to $37.3 million.

Environmental Costs

Using natural gas rather than oil would have lowered atmospheric emissions of various pollutants. Using combustion emission coefficients data, the total emissions from appropriate quantities of natural gas and then from residual fuel oil can be estimated. By subtracting the difference, we get an estimate of the physical benefits of a regulatory-process speed-up. I am using, for illustrative purposes, externality estimates from the Ottinger-Pace University report and from the May 1990 Tellus Institute report on environmental externalities.[3] As Table 1 shows, Ottinger-Pace and Tellus differ significantly in their valuations of the adverse impacts of pollutants. For present purposes, we need not resolve such differences or put an alternative forward. Let's just use both.

TABLE 1.—ESTIMATES OF ECONOMIC COSTS OF POLLUTANTS

[Cost per ton]

Pollutant	Ottinger-Pace	Tellus Institute
Carbon dioxide	$14	$22
Sulphur dioxide	4,060	1,500
Nitrogen oxides	1,640	6,500
Suspended particulates	2,380	4,000

Source: Ottinger, pp. 31–35; Bernow, p. 33.

The total costs of the pollutants discharged into the atmosphere over a one-year period, in the absence of 100,000 Mcf/day of natural gas capacity, is $160 million using the Ottinger-Pace member. Using the Tellus costs, the total costs of pollutants is $94 million.

If Florida were one of the nine states in which regulatory commissions require their utilities to incorporate the cost of externalities in its planning process, Florida utilities in aggregate would have conceivably have had to consider externality costs of anywhere from $158 million to $224 million.

[3]Ottinger, Richard L. et. al., "Environmental Costs of Electricity," Pace University Center for Environmental Legal Studies, September 1990. Bernow, Stephen and Donald B. Marron, "Valuation of Environmental Externalities for Energy Planning and Operations," Tellus Institute, May 18, 1990.

The numbers that I have presented here today suggest that for every year of delay for a project such as the FGT case, the costs of these benefits potentially can be staggering. In total, the estimate of the economic and environmental costs attributed to a one-year delay in the FGT proceedings comes to $261 million using the Ottinger numbers, and $195 million using the Tellus numbers. The balance of payments costs total $130 million.

To put these numbers in perspective, $195 million to $261 million for a year's delay can be compared to the $160 million for the second phase of the FGT expansion. Table 2 summarizes the various costs that I have described.

TABLE 2.—COST OF A 1-YEAR DELAY IN FGT REGULATORY PROCEEDINGS

Cost elements	Millions of 1990 dollars
Excessive fuel costs	37.
Environmental externality costs	94 to 160.
National security costs	64.
Total costs	195 to 261.
Balance-of-payment costs	130.

IV. BALANCING ECONOMIC COSTS AND DUE PROCESS BENEFITS

We should be cognizant not only of the economic costs of a long decisional process, but also of the alleged benefits to society. What are the benefits of regulatory delay?

Like some of the costs I mentioned earlier, benefits of regulatory delay are difficult, at best, to quantify, or even identify in some cases. However, we can probably agree that the benefits of delay include the following:

Ensuring that interested parties have an adequate forum in which to voice their concerns and opposition.

Providing a chance for FERC to explore all the potential economic, environmental, political and energy security implications of a project.

Providing the opportunity for FERC to ensure that the sponsoring party plans to comply with all the appropriate rules and regulations governing natural gas pipeline construction and operations.

These are real benefits. However, we need to ask what it will cost to provide these benefits and at what point the marginal benefits will beome too costly to be justified.

I defer an answer to the others on this panel who will address the benefits of the current procedural rights and possibilities for procedural reform. However, my experience as a regulator and as a participant in various proceedings leads me to conclude that an adequate record on the legitimate questions about the economic efficiency of new projects and the distribution of costs and benefits could be adequately developed in significantly less time than it now takes the FERC. If so, the numbers I have developed indicate we are paying a price for the current FERC procedures that I, for one, find unjustifiable.●

AMERICA'S JAPAN POLICY

● Mr. ROCKEFELLER. Mr. President, in December of this past year, Ira Wolf, my former legislative assistant and now Director of Government Relations-Japan for Motorola, Inc., gave a speech in Tokyo about the U.S. Congress and America's policies affecting Japan. He gave a compelling description of the role that Congress plays in formulating policy in Washington. In this speech, he also argued that Congress acts as a responsible and constructive participant in developing policy toward Japan.

Though I am admittedly biased, due to my enormous respect toward this former aide and key advisor, I believe that Ira Wolf has presented some highly useful insights and analysis to the Japanese and Americans in this address. So that others might benefit from this excellent work, I ask that the text of his speech be included in the RECORD. I encourage my colleagues, their staff, and other interested readers to give special attention to this.

The text follows:

THE U.S. CONGRESS AND AMERICA'S JAPAN POLICY

(By Mr. Ira Wolf, Director of Government Relations-Japan Motorola, Inc.)

Mark Twain wrote over 100 years ago that "It could probably be shown by facts and figures that there is no distinctly native American criminal class except Congress." Thomas Jefferson, near the end of his life, wrote about the Congress: "That one hundred and fifty lawyers should do business together ought not to be expected." The Greek author Aristophanes, in 424 B.C., wrote: "You have all the characteristics of a popular politician: a horrible voice, bad breeding, and a vulgar manner." Criticism of politicians is not a new phenomenon.

Despite these statements, my thesis today is that the U.S. Congress is a serious and responsible participant in the policy formulation process in Washington. This may not be a popular time to defend the Congress. Many here in Tokyo believe that Congress is a single-minded, Japan-bashing institution. Many in the United States believe, especially after the recent budget fiasco, that Congress is completely paralyzed. Nevertheless, I submit that Congress is playing the role that was expected of it by our Founding Fathers. I believe the input of Congress into America's Japan policy has been positive and constructive, if viewed from the perspective of America's national interest. "Nations do not have friends; they have interests." It sounds cynical, but to expect anything different is to be hopelessly naive.

Let me start by discussing the role of the Congress in the American political system. This is misunderstood by most non-Americans because our Presidential system is so different from the Parliamentary systems in the rest of the industrialized world. I should note that even many Americans do not adequately understand the role of the Congress.

One of the fundamental tenets of the US Constitution is the separation of powers among the three branches of government—the Executive, the Congress, and the Judiciary. For the sake of simplicity, I will not discuss the Judiciary today. Each branch is given different powers, although there is ambiguity and overlap in their respective authority. The purpose of the Founding Fathers was to assure that no branch obtained overwhelming power. As James Madison wrote in the "Federalist Papers," "ambition must be made to counteract ambition." While this system of "checks and balances" results in a permanent struggle between the Congress and the Executive (by which I mean the President), it also forces the two branches to work together. Paralysis in the political system occurs when they are unable to do so.

Paralysis is not unique to those times, such as today, when control is divided politically between a President of one party and a Congress where the majority is from the other party. Modern American history is replete with cases where Presidents failed to achieve their objectives, even when their own party controlled the Congress.

That is, the conflict inherent in the separation of powers is much deeper than simple partisan politics. These two institutions, the Executive and the Congress, have different functions, serve different roles, and are accountable to different masters. The President is responsible to the nation and its people as a whole. The Congress, in contrast, is responsible to individual constituencies, whether they be a half million person Congressional district or an entire state. And, as one political observer has noted, "Constituencies are themselves narrow interests." Congress has the obligation to ensure that the views of the people, in all their diversity, are heard in the deliberations of the federal government.

To formulate and carry out a policy, the Congress and the Executive must work together. That process of political consensus-making is basic to the American system. No matter how good an idea or a policy may be, it can only be implemented through the political system. The federal government might run more efficiently if the President were much stronger. But that would run counter to historical experience and the very purposes of the founding of the United States. Thomas Jefferson wrote: "I know of no safe depository of the ultimate powers of the society but the people themselves." Except in rare crises, the American people do not want too strong a President. Polls continue to show that people actually prefer that power in the federal government be divided between the two parties.

Although this may appear to be a textbook explanation of how power is distributed in Washington, it accurately describes the fundamental reality of our political process. The result is often inefficient, cumbersome, and sloppy. In fact, having just completed three years working on Capitol Hill, watching its daily political machinations, I confess that I left Washington with a sense of pessimism, cynicism, suspicion, and gloom. Financing of Congressional campaigns desperately needs reform. A system where, as happened last month, 97 percent of sitting Senators and 96 percent of sitting House members who ran for reelection were victorious, indicates a potentially dangerous permanent incumbency. Lobbying by domestic and foreign interests, while legitimate and, in fact, necessary, has become so intense that the very concept of a political system responsive to the public may be in jeopardy. The low quality of election campaigns with the newly dominant phenomenon of negative campaigning is very worrisome. Congress, and, parenthetically, the Executive Branch as well, is unwilling to make hard and unpopular decisions that will help reduce the budget deficit and improve America's competitiveness. The low percentage of American citizens who actually vote in Congressional elections is extremely disturbing—below forty percent last month. Clearly, political reform is needed in the United States. Thomas Jefferson wrote that ". . . a little rebellion, now and then, is a good thing, and as necessary in the political world as storms in the physical." But despite these problems, Congress does provide the means for the people, in their diversity, to be heard in Washington.

Of keen interest to all of us is trade policy formulation in Washington. What is the Congressional role? Article One of the American Constitution gives Congress the sole power "to regulate commerce with foreign nations" and the authority "to lay and collect . . . duties." There is no mention of the President, and the power to establish trade policy, thus, lays with the Congress. For a number of reasons discussed in great detail in an excellent book by Professor I.M. Destler, "American Trade Politics: System Under Stress", this began to change in the 1930's when Congress initiated a forty-year process of delegating its trade authority to the President.

By the 1970's, however, the United States began to experience increasing foreign competition, growing trade deficits, changes in its relative economic strength versus other countries, floating exchange rates, GATT rules that were applicable to less and less of international trade, and an increasing importance of foreign trade to the American economy. Interest groups became more active; new issues, such as concern over exchange rates and industrial policy, arose. Laissez-faire trade doctrine was challenged. Managing trade issues became much more complicated, and Congress began to reassert its Constitutional authority in setting trade policy.

Congress became more active in initiating laws. Oversight of trade law increased. Trade expertise grew, among both members of congress and their staffs. Hearings, committee reports, legislative proposals. Sense of the Congress Resolutions, overseas trips to Tokyo and Geneva, all became vehicles for Congress to influence U.S. trade policy. In the 1980's, Congressional frustration increased further because of inaction by the Reagan Administration, and that led directly to greater activism on trade issues.

However, I must point out that Congress is not the Neanderthal, Japan-bashing, protectionist institution that the media in Japan would have you believe. There is a significant difference between activism and protectionism, or between efforts to close American markets versus using the leverage we possess to open markets overseas and to help make America competitive again. Much of the news reported in Japan about the Congress in the last few years covered the activities of individuals—in many cases, relatively unknown junior members of Congress with little or no influence. The most notorious, of course, relates to the Toshiba incident, where the smashing of a cassette radio on the lawn of the Capitol was played endlessly on Japanese television. Why should a statement or action by an unknown Congressman criticizing Japan have any more significance than a statement by a junior and unknown Diet member? The former is a headline; the latter is ignored.

Furthermore, in a two-year Congressional session, over 10,000 bills and resolutions are introduced. Of these, maybe several hundred will be enacted into law—at most, three to five percent. Contrast this with the Diet where well over 90 percent of bills that are introduced become law. Most bills are introduced into the Congress for other purposes—to influence public opinion, to promote a favorite project or policy, to set the stage for later legislation, to provide a forum for discussion, or to respond to constituents' interests. I mention this because serious analysis of the Congress as an actor in U.S./Japan relations requires an understanding that it is a mistake to treat every bill introduced that is critical to Japan or targets action toward Japan as significant.

It is important to examine precisely and systematically what the Congress has done regarding American policy toward Japan. If one looks at actual legislation, I think the answer is "not much." The most prominent example of such legislation in the last four years was probably the Omnibus Trade and Competitiveness Act of 1988. Much of the focus of attention has been on the so-called Super 301 provision under which the U.S. designated priority countries for special negotiations to remove trade barriers.

This provision began as the Gephardt Amendment which would have required those countries that had a large bilateral trade deficit with the U.S. to reduce that deficit ten percent a year for three years. This proposal was found wanting, and Super 301 emerged as a more or less general set of guidelines to the President who retained ultimate discretion in its application. Earlier versions of Super 301 made the President's actions mandatory. But, in negotiations within the Congress and with the Executive Branch, his discretion was enhanced. This latter point, the fact of negotiations between the Congress and the Executive Branch, is vitally important. It takes a two-thirds majority vote in both Houses of Congress to override a Presidential veto. This means that, other than in truly exceptional cases, the Congress must obtain the agreement of the President before a bill is enacted into law. This forces compromise and conciliation, and that is what happened with Super 301 and many of the other provisions of the Trade Act.

Another issue at the top of the Congressional agenda is direct foreign investment in the United States. Although most proposals are couched in a general way, Japan is clearly the target. The Bryant Amendment, which first articulated concern about increasing foreign investment, was introduced in 1987. Although it received considerable press attention in both the United States and Japan, it was not well-received on Capitol Hill. Most members of Congress recognized the need and benefits of foreign investment, both direct and portfolio, and saw this proposal as more than just a neutral information-gathering effort. It was perceived, generally, as the first step in possibly moving to restrict or control foreign investment in the future.

After three years of deliberation, this fall the Congress enacted a proposal offered by Senator Exon and Congressman Lent and endorsed by the Executive Branch to provide for sharing of data currently collected by different government and for an annual report on the effects of foreign investment on key American industries. This three-year debate indicates the kind of thoughtful and serious consideration these proposals have been given. Yes, the rhetoric has been very sharp at times. But, the Congress, like the White House, exists in the world of politics where rhetoric is often the currency. One reaches a totally different conclusion, however by examining the actual results, rather than the rhetoric.

Finally, let me turn to the 102nd Congress which will convene in January? What will happen? Arthur Clarke has written: "This is the first age that's paid much attention to the future, which is a little ironic since we may not have one." We can be sure, however, that those of us involved in U.S./Japan frictions have a future, so let us look at next year.

Whether or not war breaks out in the Middle East, the Iraqi invasion of Kuwait has profoundly altered the thinking of those in

the Congress, and elsewhere in the United States, who view U.S./Japan relations as fundamentally based on the security relationship rather than on economic, financial, and trade factors. To the United States, the Iraqi problem is a global issue, affecting the world economy, the political balance in the Middle East, and the possession of nuclear weapons by a Middle East power. The United States also looks at the moral dimension—the dismemberment of a nation-state and Saddam Hussein's use of chemical weapons. Japan, on the other hand, looks at the supply of oil and, as we have heard from many in Japanese industry, high priced oil will affect the United States and Europe much earlier than it will damage this economy. Japan also looks at the Iraqi crisis in terms of U.S./Japan relations, searching for the minimum participation necessary to assure the maintenance of that most important bilateral relationship.

Please excuse my gross oversimplification of a complex issue. The problem is that those Americans who have focused on security as the centerpoint of U.S./Japan relations have believed for forty years that America's global security concerns and Japan's global security concerns coincided. They have assumed that Japan, when it eventually became a wealthy and mature nation, would play a major international political role, and that role would be in accord with American interests. Those Americans are now upset, disheartened, frustrated, and angry—not at themselves for a fundamental misunderstanding of Japan, but at Japan for not recognizing what these American experts see as Japan's international interests. These Americans, in Congress, in the Executive Branch, in the media, and in academia, have served as an important buffer, as a critical ally of Japan, when others were criticizing its trade, financial, and economic policies. In the 102nd Congress, especially if there is war in the Middle East and American soldiers die in the thousands, this buffer will disappear, and Congressional pressure on Japan in many areas, old as well as new, may reach new heights.

We are entering a very dangerous and uncertain period. Congress will be a major actor in the United States in determining how the U.S./Japan relationship develops in the future. I hope that my comments today will help you better understand that institution.•

HONORING TRISH GUNDLACH

• Mr. KASTEN. Mr. President, at a time when all of us are bursting with pride at the accomplishments of our brave soldiers in the Persian Gulf, we ought to take a moment to thank some of those who served by staying at home.

I have in mind in particular the terrific job that has been done in Wisconsin by the seven National Guard family assistance centers. The men and women at these seven facilities are on hand to help soldiers' families with some of the most trying problems of daily life—legal difficulties, late paychecks, trying to get health benefits.

Most important of all—when a loved one is far away and in danger—these men and women are there to listen. They have fielded nearly 10,000 calls since the war effort began.

I rise today to pay my respect to one person who I am told has been a real star in this whole effort—WO Trish Gundlach. She has made a huge difference in the lives of some of these families—so to her and all her colleagues at the family assistance center of Wisconsin, I ask my colleagues to join me in sending our heartfelt thanks.•

TRIBUTE TO NICARAGUAN JOURNALISTS

• Mr. GRAHAM. Mr. President, March 1, is a special day for Nicaraguan journalists around the world. On that day in the year 1884, the first daily newspaper was founded in Nicaragua by Gen. Rigoberto Cabezas and named appropriately, El Diario De Nicaragua.

The tradition lives on. At the beginning of this century, every 1st of March, the entire country of Nicaragua and Nicaraguan journalists throughout the world celebrate "the Day of the Nicaraguan Journalist."

Since 1980, the Nicaraguan citizens in exile residing in South Florida have continued this celebration.

Florida has a well-deserved reputation for excellence in journalism, and Nicaraguan journalists are a part of that proud tradition. We share the belief that an informed public provides the foundation for a free society.

This year—with freedom and democracy on the rise—we salute the vigor and the industriousness of Nicaraguan journalists who exemplify freedom of expression every day. These journalists personify the free expression guaranteed in our first amendment. Their task is vital, their audience is vast and their dedication to the free flow of information is unshakable.

I join the Nicaraguan community residing in the State of Florida in celebrating "the Day of the Nicaraguan Journalist."•

CLOWES MEMORIAL HALL

• Mr. COATS. Mr. President, it is with great pride that I rise today to recognize the Clowes Memorial Hall of Indiana's Butler University. Clowes Memorial Hall has been selected as one of only 14 arts centers from across the Nation to participate in the Institute on Arts Education developed by the John F. Kennedy Center for the Performing Arts.

Since its opening in 1963, Clowes Memorial Hall has been at the center of cultural activities, not only in Indiana, but in the entire Midwest. Clowes Hall is a renowned performing arts facility which hosts a wide variety of music, theater, and dance presentations. This facility boasts its own jazz, variety, and great artist series of programs and is home to several resident companies such as the Indianapolis Ballet Theatre and Indianapolis Opera. Clowes' patrons are provided with the very best cultural offerings in a wide spectrum of performing arts. Clowes Hall has been successful in instilling Hoosiers with a deep appreciation of the arts and in enhancing the cultural awareness of the community.

At this time, I would like to commend Clowes Memorial Hall for maintaining a standard of cultural excellence in Indiana and for being selected to participate in the Institute on Arts Education. I would also like to recognize the staff at Clowes Memorial Hall for their efforts and offer them my best wishes for continued success.•

HONORING OSHKOSH TRUCK

• Mr. KASTEN. Mr. President, I rise today to alert my colleagues to some very informative statements made this morning by the Secretary of the Army Michael C. Stone. In testimony before the Defense Appropriations Subcommittee, Secretary Stone discussed the performance of some of the Army's high-tech weapons systems. In addition, he also indicated that items other than high-tech weapons had made important contributions to our war efforts and specifically complimented the Oshkosh Truck Co. for its heavy expanded mobility tactical truck [HEMTT], which performed exceedingly well in support of our troops in the Persian Gulf. Secretary Stone said "The HEMTT, which is built in Wisconsin, performed very well, and we wanted to get as many of them over there as we possibly could."

I believe it is important to bring Secretary Stone's statements to my colleagues' attention since there was a great deal of discussion in past years on funding for these trucks. A number of Senators did not support the funding. The trucks' outstanding performance in the Persian Gulf and the Army's support for the HEMTT vindicates the acquisition of these vehicles.•

PRESIDENTIAL DECERTIFICATION OF SYRIA

• Mr. D'AMATO. Mr. President, I rise today to support the Presidential determination to decertify Syria on the grounds that it has failed to fully cooperate with the United States on narcotics control efforts and that it has failed to take adequate steps on its own against production and trafficking of illicit drugs. On March 1, 1991, President Bush denied certification to Syria under section 481(h) of the Foreign Assistance Act.

The March 1991 State Department International Narcotics Control Strategy Report, which accompanied Presidential Determination No. 91-22, Outlines Syria's participation in narcotics trafficking. The following are state-

ments directly from the State Department report:

Page 306:

The United States Government has reliable reports that individual Syrian soldiers and other officials stationed in Lebanon's Bekaa Valley, as well as higher-level Syrian military officials, are involved in the drug trade. While this is in clear violation of Syrian and Lebanese law, there is no evidence that any of these military officers or soliders has been prosecuted for this activity. Such activities cause skepticism about Syria's professed interest in Narcotics control. Narcotics arrests have declined over the past few years.

Page 304:

Syria is a transit point for illicit drugs as well as a refiner of heroin. Lebanese-produced hashish and herion, destined for Europe and the U.S., transit Syria * * * small amounts of cocaine, refined in Lebanon and Turkey, also transit Syria * * *

The U.S. Drug Enforcement Administration [DEA] officer based in Cyprus visited Damascus three times in 1990, held discussions with police officials on individual cases and on ways to improve the exchange of information. The U.S. Government is unaware, however, of any actions by Syrian authorities against these individuals as a result of the information provided.

Page 305:

Official Syrian Government policy opposes the use, sale, distribution, and trafficking of narcotics, psychotropic drugs, and other controlled substances. In theory, Syria's formal legal system would appear adequate to deal with narcotics offenses. In practice, however, these laws are not effectively administered and there is some use, trafficking, and processing of illicit drugs.

Syrians operate on four levels of involvement in the drug trade—cultivation, processing and refinement, transport, and marketing/distribution. While the extent to which drug trafficking is officially sanctioned by the Syrian Government is unknown, it is known that such activity provides a boost to a sagging Syrian economy, that high-ranking Syrian military officers have been implicated in the drug trade, and that some family members of President Hafez Assad are alleged to be involved in narcotics networks.

According to Anthony Haden-Guest, the author of a May 1990 Vanity Fair article entitled "Letter From Beirut: Medellin East":

I have myself seen hashish-laden lorries trundle down the Bekaa Valley's single main road, undisturbed by Syrian Troops. Traffickers with passes signed by Syrian generals move about freely. Heroin dealers entertain Syrian officers in the grandiose mansions that house their laboratories.

One trafficking family brought in Colombians to show them how to grow coca leaves. The head of the family is allied with Rifaat Assad, the Syrian President's brother. I have seen a D.E.A. surveillance film showing a top representative of the Medellin Cartel meeting in Cyprus with a representative of the Syrian Government.

Halate, an illegal port in Lebanon's Christian enclave, where many traffickers have chalets, is protected by Syrian gunboats. There are reports of Syrians' burning the property of insubordinate traffickers. It is clear that Syria is tightenting its control of the drug traffic.

The June 1990 The World and I, a publication of the Washington Times, contained an article entitled "The World's Largest Drug Field" which described the drug trade in Lebanon. The following are quotes from this article:

The Syrian Government which invaded the area to "bring law and order" is an active partner with local merchants and raked in as estimated $1 billion last year. This money was desperately needed, as the Syrians have to pay off their vast debts to the Soviet Union before Moscow will supply any more sophisticated missiles, fighter planes, and other weapons for President Hafez Assad's 800,000-strong Army.

Masterminding the entire operation in the Bekaa today is Gen. Ghazy Kenaan, chief of Syrian military intelligence.

* * * So lucrative has this trade become that there is now rivalry between the various Syrian intelligence agencies and lower rank Army officers who also want a share of the loot.

To establish order, the crack 25,000-strong Syrian Presidential Guard, called defense brigades of the revolution—created by Rifaat and considered still loyal to him—was sent from Damascus to take over control of the Bekaa Valley Drug business.

In January, two members of the Syrain military intelligence were sentenced to eight years' imprisonment in Paris for drug trafficking. Mohammed Fartuzi and Ahmed Ali were caught after trying to smuggle eight tons of Cannabis by ship from the Syrian-controlled Lebanese port of Tripoli to France. Evidence was accepted that the former Syrian military attache in Paris and a senior Syrian Army commander directed the smuggling of Lebanese drugs to Europe.

* * * U.S.-made tractors and other agricultural equipment supplied by the Syrians to villagers have speeded up harvesting during the past two years. One reason for this is the growing value of the Bekaa Valley as the world's major source of this modern scourge in Britain and other western countries.

Mr. President, we are all too aware of Syria's relationship with, and harboring of, violent terrorists such as Ahmad Jibril. We also know about the sophisticated military it has amassed, and its influence and control in areas of Lebanon. But Syria's involvement in the drug trade is not widely discussed and I believe it shows yet another questionable activity associated with the current Assad government.

The United States has all too frequently paid the piper for its association with leaders of dubious character who eventually came to represent a threat to U.S. interests. One only has to remember the names of Manuel Noriega and Saddam Hussein to realize that our past intentions and actions were gravely misplaced. Let us not forget the lessons learned from these past mistakes. Let us resolve to direct our international relations with more foresight. Finally, let us not even contemplate a relationship with a government that supports terrorists, that wreaks havoc in a war-torn nation, and that does not cooperate with us against the drug trafficking that destroys the very health and welfare of millions of our own children.●

NOMINATION OF JAMES F. HOOBLER

● Mr. D'AMATO. Mr. President, today it is my honor to recommend a native New Yorker, Dr. James F. Hoobler, who has been nominated by the President to serve as inspector general of the U.S. Small Business Administration. As you are aware, the office of the inspector general works independently and objectively to conduct audits and investigations relating to SBA programs and operations. Dr. Hoobler's long, distinguished career in Federal service, with an extensive background in program management, planning, budget, and financial matters, makes him an ideal candidate for this position. As Deputy Assistant Secretary of State for International Narcotics Matter, as senior executive for the President's Management Improvement Program at OMB, and as Associate Deputy Administrator for Planning and Finance at the Veterans' Administration, he has consistently demonstrated an expertise in the proper oversight and management of the spending of taxpayer dollars.

I know that this committee is concerned about the soundness of the agency's finance and investment programs, particularly the SBIC Program. Last year, after a number of hearings to review the Small Business Investment Companies [SBIC's] Program, it was clear that the need exists for an inspector general at the SBA. The ideal inspector general is one experienced in matters of Government and capable of advising the Administrator and the Congress of any developing problems or shortcomings in agency programs. Dr. Hoobler's credentials have established his dedication to fiscal integrity in Federal programs, and we are truly fortunate that the administration has convinced him to return to Federal service so that we may benefit from his expertise.

I am convinced that Dr. Hoobler will make an exemplary Inspector General for the Small Business Administration. I am hopeful that the committee and Senate as a whole will act expeditiously to confirm his nomination for this position. Once again, it is my pleasure to recommend Dr. Hoobler to the committee today.●

ORDER OF BUSINESS

Mr. RIEGLE. All of the unanimous-consent requests that will be presented have been cleared on the Republican side.

AUTHORITY TO INTRODUCE AND FILE SENATE BUSINESS

Mr. RIEGLE. I ask unanimous consent that until 8:40 p.m. Senators may introduce bills and resolutions, and committees may file reported legislation and Executive Calendar business.

The PRESIDING OFFICER. Without objection it is so ordered.

MEASURE PLACED ON CALENDAR—H.R. 1176

Mr. RIEGLE. Mr. President, I ask unanimous consent that H.R. 1176, the emergency authorization bill for the Department of State for costs associated with the Persian Gulf conflict, be placed upon the calendar.

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

ORDERS

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Senate now stand in recess until 8:30 p.m. tonight; that at 8:40 p.m. the Senate assemble as a body and proceed to the House of Representatives to hear the President address a joint session; that at the conclusion of the joint session the Senate stand in recess until 9 a.m, Thursday, March 7; that following the prayer the Journal of proceedings be deemed approved to date; that time reserved for the two leaders be reserved for their use later in the day; that there be a period for morning business not to extend beyond 11:30 a.m., with Senators permitted to speak therein, with the time from 9 a.m., to 10:30 a.m. under the control of the Republican leader or his designee and the time from 10:30 to 11:30 a.m. under the control of the majority leader or his designee.

I further ask unanimous consent that at 11:30 a.m. the Senate resume consideration of S. 419, the RTC funding bill, with the Specter amendment No. 27 pending, and that the 30 minutes remaining on the amendment be used between 11:30 and 12 noon;

I further ask unanimous consent that at 12 noon the Senate proceed into executive session to consider the nomination of Edward Madigan to be Secretary of Agriculture; that there be 20 minutes of debate equally divided and controlled between Senators LEAHY and LUGAR; that a vote with respect to the confirmation of the nominee occur at 12:30 p.m.; that following completion of the vote, the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action with respect to the nomination; and that the Senate return to legislative session at that time.

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

Mr. RIEGLE. Mr. President, let me state again that for the record, that there will be a rollcall vote on the Madigan nomination at 12:30 p.m. tomorrow.

RECESS UNTIL 8:30 P.M.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the Senate now stand in recess until 8:30 p.m.

There being no objection, the Senate, at 5:52 p.m., recessed until 8:31 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GORE].

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

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

JOINT SESSION OF THE TWO HOUSES TO HEAR AN ADDRESS BY THE PRESIDENT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the House of Representatives to hear the President address a joint session.

Thereupon, at 8:40 p.m., the Senate, preceded by the Secretary of the Senate, Walter J. Stewart, and the Sergeant at Arms, Martha S. Pope, proceeded to the Hall of the House of Representatives to hear the address by the President of the United States.

(The address by the President of the United States, this day delivered by him to the joint session of the two Houses of Congress, appears in the proceedings of the House of Representatives in today's RECORD.)

RECESS UNTIL 9 A.M. TOMORROW

At the conclusion of the joint session of the two Houses, and in accordance with the order previously entered, at 9:49 p.m., the Senate adjourned until Thursday, March 7, 1991, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate March 6, 1991:

DEPARTMENT OF STATE

ROBERT B. ZOELLICK, OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF STATE FOR ECONOMIC AND AGRICULTURAL AFFAIRS, VICE RICHARD THOMAS MCCORMACK.

INTERNATIONAL BANKS

ROBERT B. ZOELLICK, OF THE DISTRICT OF COLUMBIA, TO BE U.S. ALTERNATE GOVERNOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF 5 YEARS; U.S. ALTERNATE GOVERNOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF 5 YEARS; U.S. ALTERNATE GOVERNOR OF THE AFRICAN DEVELOPMENT BANK FOR A TERM OF 5 YEARS; U.S. ALTERNATIVE GOVERNOR OF THE AFRICAN DEVELOPMENT FUND; AND U.S. ALTERNATE GOVERNOR OF THE ASIAN DEVELOPMENT BANK VICE RICHARD THOMAS MCCORMACK; AND TO BE U.S. ALTERNATE GOVERNOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT. (NEW POSITION.)

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

JAMES THOMAS GRADY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1991, VICE HENRY F. SCHICKLING, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED ARMY MEDICAL CORPS OFFICERS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 611(A) AND 624(C):

To be permanent major general

BRIG. GEN. WILLIAM L. MOORE, JR., [redacted] U.S. ARMY.

To be permanent brigadier general

COL. RUSS ZAJTCHUK [redacted] U.S. ARMY.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

DUANE H. CASSIDY, OF VIRGINIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE 1ST SESSION OF THE 102D CONGRESS. (NEW POSITION.)